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Reform Jewish practice and
its rabbinic background

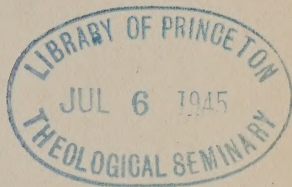
Reform Jewish Practice

AND ITS RABBINIC BACKGROUND

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BY SOLOMON B. FREEHOF, D.D.



Hebrew Union College Press · CINCINNATI

1944

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DEDICATED TO THE MEMORY OF MY
REVERED AND BELOVED TEACHER
JACOB ZALLEL LAUTERBACH

ACKNOWLEDGMENTS

The author acknowledges his great indebtedness to the Alumni Association of the Hebrew Union College for its generosity in helping defray the cost of publishing this manuscript, to President Julian Morgenstern for his encouragement, and to Dr. Israel Bettan and Dr. Samuel S. Cohon, of the Hebrew Union College, for their reading of the manuscript and the valuable suggestions which they made, also his gratitude to Lillian S. Freehof who prepared the type-script, to Rabbi Louis I. Egelson and Dr. Emanuel Gamoran for their invaluable aid in preparing the manuscript, and to M. Myer Singer for seeing the manuscript through the press.

S. B. F.

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Reform Jewish Practice

AND ITS RABBINIC BACKGROUND

INTRODUCTION

Judaism is frequently characterized, in contrast to Christianity, as being a religion of deed rather than creed. To a considerable extent this characterization is correct. The early history of Christianity was a series of battles over theological niceties in an attempt to determine definitely what every Christian must believe in order to be a Christian, while Judaism, certainly from the time of the Second Commonwealth, devoted its energies to determining the Halakah, the practice, the right action so as to determine what is the proper series of deeds for the righteous Jew.

Yet this characterization of Judaism as deed rather than creed should not be overstressed. As Christianity is interested in what a man does as well as in what he believes (the whole development of the canon law is evidence of that), so Judaism is interested in what a man believes as well as in what a man does. The whole development of the Jewish philosophic literature of the Middle Ages is evidence of that. Both religions are interested in creed and deed but they differ as to the *relationship* of deed to creed. This amounts to a difference in the approach to the religious life. It is not so much a question as which is the more important, belief or action, but, which should come first in a man's religious development. This question of social-religious pedagogy is indicated in the famous dictum in b. *Pesahim* 50b which may be paraphrased

as follows: let a man busy himself with the fulfilling of the commandments even though his heart is not in it for ultimately the hand will teach the heart. Judaism is convinced that if you begin with the right action you will arrive at the right beliefs, whereas Christianity seems to hold that if you will begin with the right belief you will arrive at the right actions. Christianity begins with the philosophical and arrives at the concrete. Judaism begins with the concrete and arrives at the philosophical. Christianity is therefore deductive. Judaism is inductive.

The foundation of Jewish religious life is Jewish practice upon which are built habits of mind and attitudes to the universe. It is a case of: "we will do and then we will hear." First we obey God's commandments and then we learn to understand God's nature. We do not begin with theology, we *arrive* at theology. This is the historic Jewish way.

This being the case, changes in practice are of greater significance in Judaism than in any other faith; and when events of Jewish history compelled drastic changes in religious observances, this did not mean merely that just an outer form had been discarded after it had been outworn. It meant that the mansion of the soul had been shaken to its foundation.

Judaism has been compelled to undergo a number of catastrophic changes of observance. It is almost beyond our power to imagine how shocking the change must have been to Jews who lived at the time

of the destruction of the Temple by the Romans. By that time the Temple at Jerusalem had integrated itself in innumerable ways into the life of the people. It was the center of their festival observance; the maintenance of its priests and Levites was the heart of its system of taxation; the times of its offerings determined the time of the synagogue service. Then suddenly all this mass of active Jewish self-expression was erased and Judaism had to create an entirely different set of observances. If Judaism were merely a religion of creed, the destruction of the Temple would never have been so great a shock. But since Judaism was primarily a religion whose first self-expression was in observances, then a complete change of religious observance amounted to religious revolution.

A second revolution in Jewish practice occurred with the wide growth of the Diaspora. When the Jewish community in Palestine grew smaller and smaller, the Jewish community all over the world grew correspondingly larger and Jewry became primarily a Diaspora people. A tremendous change in observance necessarily took place. All the laws which were "dependent upon the land," tithes, heave-offering, Sabbatical year, the laws of the Sanhedrin, ordination, the traditional method of fixing the calendar, the cities of refuge, etc., etc., could no longer be observed. Their absence left a vacuum in Judaism and once more a vast readjustment of practice had to be endured.

How did Judaism succeed in making the necessary

revolutionary readjustments in the crises of the past? It is not quite correct to say that Judaism readjusted itself because its system of law was flexible, that the old laws were reinterpreted and readjusted to the new conditions. No law is really flexible enough for such a task. Laws change slowly and perhaps Jewish law more slowly than most law for an obvious reason. All law has two instruments of change, legislation and interpretation, in other words, through new laws and through the interpretation of old laws. But, having lost its Sanhedrin, Judaism lost the ability to make a new beginning with new legislation. Only on rare occasions did some exceptional personality, like Rabbenu Gershom in the eleventh century, find it possible to convoke a synod which was influential enough to make radical decisions which gave to Jewish law somewhat of a new direction. In general, Jewish law was confined to "judge-made law," to the interpretation of older statutes; and with the best will in the world, older statutes can be stretched just so far and no further.

If, for example, a group of rabbis in Palestine could succeed where Jacob Berab in the sixteenth century failed, and would reestablish the old ordination and thus revive the Sanhedrin, a bitter problem such as that of the Agunah could be solved with a stroke of the pen. But, since Jewish law has no legislative instrument and must confine itself merely to the interpretation of old statutes, hundreds of brilliant rabbis have devoted their finest thinking in trying to solve

the problems of the Agunah and have still largely failed. Therefore, it could not have been Jewish law alone, confined as it is to the interpretation of old statutes, which has tided Judaism over the catastrophic breaking of old forms of practice in past crises of Jewish religious history. There must have been a creative power which could originate new practices in place of the old.

Such a creative power, imaginative and original, was the Minhag, the custom of the people. It never failed to originate new procedures and to give Judaism new and "stately mansions." The Minhag created by the masses was the raw material which the law took up and shifted, rearranged, justified and embodied as the legal practice. The law itself did not create. The people created and the law organized.

The doctors of the Jewish law understood very early that they depended upon the creative imagination of the people. In b. Berakot 45a there is a comment upon the fact that the Mishnah gives two forms of the blessing to be recited when drinking water. Which was the proper blessing that the law should determine upon? Rabba bar Rav Chanan said to Abbaye: which is the law? He said to him: "Go forth and see what the people say." That which became customary among the people was the law. In b. *Pesahim* 66a there is a discussion about the procedure with the sacrifices if the fourteenth of Nisan falls on the Sabbath. They asked Hillel what will happen if the people do not prepare their slaughtering knives

before the Sabbath came. And he answered: "Just let the people of Israel alone. If they are not prophets, they are the descendants of prophets." In other words, they will know what to do in this emergency, and of course, they did know. They put the knives in the wool of the lambs and the lambs carried the knives on the Sabbath. In j. Yebamot at the beginning of Chapter XII (12c) there is a discussion as to whether the ceremony of Halitsah may be performed only with a shoe or whether it may be performed with a sandal. The Talmud says there as follows: "If Elijah himself came and said (contrary to the present law) that we may not perform the ceremony of Halitsah with a shoe, we would hearken to him, but if he said we may not perform the ceremony of Halitsah with a sandal, we would not hearken to him, for behold many have the custom of performing the ceremony with the sandal and the custom abrogates the law." A similar statement is made in j. Baba Metsia to 7, 1 (11b). Commenting upon the Mishnah which says: "He who hires workingmen and orders them to work early and late, he cannot compel them to do so in that place where it is not the custom to work early and late," the Talmud says: "This indicates that custom abrogates the law."

Of course, not every custom of the people could be permitted to abrogate any law. The statement of the Palestinian Talmud as given in Sofrim XIV, 18, is careful to specify that the custom abrogates the law only if it is the custom of respected people (*vatikim*).

However, Isserles to Sh.A. Orah Hayyim 690 #17, states that "no custom should be abolished or mocked at for it was not for nothing that the customs were established in days gone by." Note comment of Abraham Gumbiner (*Magen Abraham*). In fact, Isserles himself records hundreds of customs which have no other origin than the practice of the people. It is these popular customs which he embodies and legalizes in his numerous notes to the Shulhan Aruk. It is clear that the rabbinical authorities appreciated the fact that the creative material in Jewish law which the official law could only analyze, sift and organize, was the true basis of the continued vitality of Judaism. That is why all the authorities respected it so. Isserles expresses the attitude of official Jewish law toward popular customs when he says (to Sh.A. Yoreh Deah 376 #4): "The custom (Minhag) of our fathers is law (Torah)."

It is clear, therefore, that the emphasis of Judaism on practice is not merely a mood which has been superimposed upon Jewish life by professional law-makers, but a true appreciation of a mass reaction, a mass creativity which produced practice and observances whenever Judaism needed to readjust itself to new conditions.

In modern times Jewish practice has received as great an earthquake shock as ever in the past. All the Minhagim developed by generations and embodied into the law by hundreds of rabbis fitted a type of life which has now completely disappeared. The Jewish

law as it was up to about the year 1750 was fully observed in the type of Jewish community in which it developed and for which it was intended. Jewish life was lived as a separate kingdom within a kingdom. The Jews governed themselves by their own law courts and they lived almost entirely in their own community. Their contact with the outer world was only incidental and transient. The Jew lived with Jews and the Jewish law completely governed Jewish life. But when modernity broke the walls of the Jewish community and Jews began to be integrated into the larger European community, the walls of the Jewish legal structure and of Jewish practice began to crack. And now, after a century, they are virtually in ruins. No one has made a realistic, statistical investigation of the present status of Jewish observance. How many Jews are there in the world who really observe the rabbinic laws of the Jewish Sabbath? What percentage of the Jews of the world actually abide by the dietary laws? How many are still guided by the Jewish laws of marriage and divorce? Jewish Orthodoxy is an ideal, an heroic self-discipline, but to what extent is it a living reality among the masses of Jewish people? Without attempting to deplore the fact as some do sorrowfully, or to rejoice in it as an evidence of emancipation as others might, but looking upon it merely as an actual social-religious fact, there is no doubt that the number of Jews left in Europe and in America who actually observe what all Jews observed one hundred and fifty years ago is pitifully

small. Jewish religious life has undergone a cataclysmic change. Certainly even for the small percentage who observe the dietary laws, the Sabbath and Jewish marriage laws, even for them, loyal, self-sacrificing Orthodox Jews in a bewildering modern world, the whole Jewish civil law code, the Choshen Mishpot no longer exists. They no longer, except in rare instances, resort to rabbinical law for the settlement of their business matters such as partnerships, contracts, notes, and loans. They go to the civil law courts. Scholars, of course, still study Jewish civil law. They ask each other abstruse questions about it and give each other ingenious answers, but all this is only the intellectual play of a handful of scholars. It is as the introduction to the Eben Haezer of the Shulhan Aruk puts it: "There are many laws in this book which are not customary in Israel these days . . . but he who studies these matters which are not customary today, nevertheless fulfills the commandment of learning the Law." A few generations ago the law governed life. Now the study of the law is intellectual exercise and pious self-absorption.

We can hardly find the courage to contemplate the exact extent of the modern neglect of Jewish observance. It would embarrass us to know from precise statistical investigation how wide-spread it is, but we know enough to worry and to wonder whether Judaism can possibly emerge from this great cataclysm in Jewish practice as it had successfully emerged in the past. Is the Jewish people still creative enough to ad-

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just itself to this change as it had adjusted itself in previous crises?

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We cannot expect that adjustment will come from Jewish law. No law, particularly a purely interpretative law as Jewish law is, can ever be expected to adjust itself radically. But can the people again create its own Minhagim, its new forms of observance and worship as it had done in the past? We do indeed see modern Jews groping their way towards modification and change in all branches of Jewish life. What will they or can they accomplish?

S. H. H. H.
From the point of view of this crucial question, it is important to study the customs and practices of Reform Judaism. The modern world which tore away the masses of Jewish people from Jewish practice, struck first in Western Europe a century and a half ago, and it was in Western Europe that Reform Judaism began almost contemporaneously with modernism. Reform Judaism is the oldest of the modern attempts to adjust Jewish practice to modern circumstances. Whether the price that it paid for this adjustment is to be considered too great or not, it must be acknowledged that it has achieved a great deal. It has kept many generations loyal to Judaism. Many of the American Reform Congregations still have most of the descendants of the founders of the congregations in their membership. The attendance at Divine Worship compares favorably with the attendance at the Divine Worship in any other form of Judaism. In its religious schools its children attend almost one hun-

dred per cent for ten successive years whereas the average in most other Jewish schools is one and one-half years per pupil. The loyalty of the members to the congregation is strong and they maintain it proudly and generously. Reform Judaism has made an adjustment which has kept its branch of Judaism alive and vital.

These four or five generations of Reform Judaism have been generations of constant change. The practice and observance in Reform Judaism varied and developed in response to the changing feelings and the attitudes of the people. The rabbis have expressed certain principles, certain theological ideals, but the people themselves by their rejections and their acceptances, by their neglects and by their observances have largely determined their own religious practices. Reform Jewish practice is not fixed. It is still changing. But by this time it has fairly well crystallized. It has arrived for the present at least at a definite form. It must therefore be of interest to all who are concerned with the problem of the adjustment of Jewish life to the modern world to study how this group of Jews has adjusted itself. Some of its practices, such as Confirmation, the late Friday Evening Services, the abolition of the woman's gallery, have been adopted by other branches of Jewry. Some are looked upon by the Conservative and Orthodox Jews as extreme and unjustified changes. But all the Reform practices together form a fairly harmonious unity and represent the summation of a century and a half of effort by

one branch of Jewry to adjust itself to modern life. What is Reform Jewish practice at present? What is observed? What is neglected? What new practices have developed? The purpose of this book is to describe this practice as a matter of interest to all who are concerned with the present-day problems of Jewish religious life.

It has been the consistent attitude of Reform that practices should be modified to meet the needs of the times, that the ethical and spiritual ideals of Judaism are eternal but they must find new modes of ceremonial expression from time to time. Therefore, Reform itself does not consider its present practice as definite and fixed. It is consciously seeking new and better ways in which Jewish observances may inculcate Jewish ideals. Therefore many new practices develop constantly. Often they are a modification of some older Jewish practice which had hitherto been entirely neglected and which now it is felt can be reconstructed and serve to instruct and inspire. It is, therefore, of interest to Reform Jews to learn more of the vast treasury of Jewish practice in the past so that from it material for new observances may be derived. Thus it is the intention of this book not only to give the present Reform practice but also the practices of the past with which these present observances are connected. In this way Reform Jews may see their observances against the background of tradition. Only those traditional laws and customs are given which are connected with actual prevalent Reform practice. Thus, those

branches of traditional law which have left very little mark upon present-day life of the Reform Jew are not dealt with. To put it bluntly, there is, unfortunately, as little observance of the dietary laws among Reform Jews as there is among millions of other modern Jews and also as little observance of the traditional laws of Sabbath rest. Hence, these branches of Orthodox law are not dealt with.

It is not the purpose of this book to be, even in the humblest way, a modern Shulhan Aruk. It does not aim to lay down the norm of practice, except in two or three disputed situations where some preference must be made. Its chief purpose is to describe present-day Reform Jewish practices and the traditional rabbinic laws from which they are derived. This purpose is indicated in the title: *Reform Jewish Practice and Its Rabbinic Background*.

PUBLIC WORSHIP

ONE DAY HOLIDAY . . . *Reform Congregations observe Pesach for seven days, Shabuot one day, Sukkot (including Shemini Atseret) eight days, and Rosh Hashanah one day.*

The Reform observance is in accordance with the Biblical law (Passover, Leviticus 23:5-8 and Numbers 28:16-25; Shabuot, Leviticus 23:21 and Numbers 28:20; Sukkot, Leviticus 23:34-36 and Numbers 29:12-35; Rosh Hashanah, Leviticus 23:24, 25 and Numbers 29:1). The day upon which each of these holidays fell depended upon which day was the first of the month, the New Moon. This day was not precisely predictable since the time it takes the moon (upon which the Jewish month is based) to complete its circuit around the earth is twenty-nine and one-half days, and since a new month cannot be begun in the middle of a day, it was uncertain whether the half day belonged to the old month or to the new (i.e., whether the old month should be twenty-nine days or thirty days). The date of beginning of each month was determined in Mishnaic times by the Sanhedrin which sat in Jerusalem. People who saw the new moon in the sky or who thought they saw it, would come to the Sanhedrin and testify. The Court examined them carefully and asked them in what part of the sky did they see the new moon, which way was it

inclined, what was its position in relation to the sun, etc. If the Court was satisfied that what the witnesses had seen was really the new moon, they proclaimed the new month. Then they kindled bonfires and sent messengers out to tell the people of Palestine and the surrounding territory that the new moon had begun that day. The people, knowing now when the month began, could easily then determine the festivals. Where, however, the messengers could not reach, as for example to the Jews in Babylon or the Jews in Egypt or in Rome, the people did not know whether the new moon was that day or the next day. Hence, to make sure that they observed the festivals on the correct day, they added one day to the festivals, making Passover eight days, Shabuot two days and Suk- kot (with Shemini Atseret) nine days and, of course, Rosh Hashanah two days. However, in Palestine they observed the number of days which the Bible fixed. So it is to this day in Palestine (with the exception of Rosh Hashanah, which see below).

Later, when the calendar was fixed by mathematical calculations and not through the testimony of witnesses, and the date of the new moon was as well known to the people far away from Palestine as to the people in Palestine, they nevertheless retained the extra day. Thus the Talmud (b. Betsah 4b) tells: Wherever the messenger of the Court reached they observed the holiday for one day. But now that we know how to fix the calendar (by mathematical calculation) why do we still observe the two days of

holiday? Because they sent (these instructions) from there (i.e., from Palestine), "Be careful to observe the custom of your ancestors." Maimonides in Yad, Hilkot Kiddush Hachodesh V, 5 says: "Nowadays . . . it would be logical that all places shall observe only one day of holiday (even those places distant from Palestine) just as the people of Palestine do, since we all determine the calendar by the same calculation, but it is the decree of the sages, 'Be careful to observe the custom of your ancestors' (i.e., to keep both days)." That is why Orthodox Jews, even in these days when the calendar is fixed mathematically and there is no doubt as to when the new month begins, still continue to observe two days in place of the one day for the first day of Pesach, the last day of Pesach, Shabuot, Sukkot and Shemini Atseret (the second of Shemini Atseret is called Simhat Torah).

The case of the New Year is somewhat different from that of the other holidays. Since the New Year was itself at the beginning of the month and therefore even in Palestine or in Jerusalem itself where the Sanhedrin convened, it was uncertain just what hour of the day the witnesses would come and their testimony be accepted, therefore they observed two days of Rosh Hashanah even in Palestine. (Yad, Kiddush Hachodesh V, 7, 8; Sh.A. Orah Hayyim 601 #2.) This custom was so well established that the Palestinian Talmud (j. Erubin end of Chapter III, 21c) says that the two-day observance of Rosh Hashanah was ordained by the earlier prophets.

The Reform movement reverted to the Biblical observance of the length of the festivals, even with regard to Rosh Hashanah.

DAYS AND TIMES FOR SERVICE . . . *Services are held on Friday evening, usually a late Friday Evening Service, Sabbath morning, and, in many congregations also on Sunday morning.*

Although the late Friday Evening Service during the winter months is later than sunset when the Sabbath should be inaugurated, nevertheless, the Reform custom of having the Friday Evening Service rather late on Friday evening has spread to most Conservative congregations and many congregations that would still consider themselves Orthodox.

As for the Sabbath Morning Service, there are perhaps not more than one or two congregations which do not maintain it. Even though in modern times it is difficult for many worshippers to come, nevertheless the congregations make every effort to attract as many people as possible. Some congregations encourage the children of the school to come on Sabbath morning with their parents. Some have the children of the school participate in the service for a certain number of Saturdays through the year.

Characteristic of the Reform movement in America is the development of the Sunday Service. In the early days of American Reform there was considerable

debate over the Sunday Service, some complaining it was instituted in imitation of the Christian Sunday service. This charge of imitating Christian custom (Hukat Hagoi) has been often unjustly made against certain Reform customs. It is important to observe what Jewish law understands by the prohibition of imitating non-Jewish customs. Merely because certain customs are observed by non-Jews do not make them forbidden to Jews. It is more than probable for example that the lighting of the light on the anniversary of the dead, the greatly revered observance of Yahrzeit, arose in medieval Germany and came into Jewish life through Christian influence. The Tosafot to Abodah Zarah 11a, s.v., v'i hukah, makes it clear that only such customs as are part of idolatrous worship or are based on delusions of idolators are forbidden. See also Moses Isserles to Sh.A. Yoreh Deah 178, 1. Discussing the prohibition to wear the garments like those which idolators wear, Isserles says that only those things which have to do with their idolatry are forbidden. See also Joel Sirkes in Bayit Chadash #127, who says that only such melodies as are an inherent part of Christian worship are forbidden in the synagogue.

The Sunday service was adopted by many Reform congregations because that was the day when people were free to come to services. It is a regular week-day service and the Service in the *Union Prayerbook* is so described: "Morning Services for the Weekday." It is not unprecedented in the history of Jewish worship

that a week-day was selected for special liturgical emphasis because on that particular week-day the people found it more convenient to come to the synagogue. It is an ancient institution of the synagogue to put special liturgical emphasis on Mondays and Thursdays (see m. Megillah I) simply because Mondays and Thursdays were the market days and the courts met on those days. The days were therefore known as "the days of assembly" because on these days the country people entered the city. Therefore the Torah reading was provided for those two days and special prayers also; and this special liturgy for Mondays and Thursdays has still maintained itself in Orthodox services.

Reform Judaism has taken this one week-day because it was the day on which people were free to attend and quite properly gave it special liturgical influence. The spirit in which the Sunday Service was established is expressed in the Resolution adopted at the 1904 session of the Central Conference of American Rabbis:

WHEREAS, We recognize the importance of maintaining the historical Sabbath as a bond with our great past and a symbol of the unity of Israel the world over; and,

WHEREAS, On the other hand, it cannot be denied that there is a very large number of Jews who, owing to economic and industrial conditions, are not able to attend services on our sacred day of rest; be it

Resolved, That in the judgment of this Conference there is nothing in the spirit of Judaism to prevent the holding of Divine Service on Sunday or any other week-day wherever the necessity for such services is felt. (C.C.A.R. Yearbook, XIV, p. 119.)

See also Joseph Krauskopf's President's message (C.C.A.R. Yearbook, Vol. XV, pp. 196-197):

What of the Service that has been introduced in some of our synagogues on the first day of the week, alongside the regular weekly Saturday Service? We know of the fears that are entertained that such a service will tend to stifle whatever little life the Saturday Service still possesses. But a goodly number of those who have introduced an additional Service on the first day of the week tell us that far from its having lessened the sanctity of the Saturday Sabbath, it has but tended to fan it into a brighter and stronger flame, by attracting goodly congregations on Sunday, by appealing to their senses of honor and loyalty, by instructing them in the history and religion of their fathers, and in the duty they owe to their God and to themselves.

CONFIRMATION . . . *Some Reform congregations provide for a Bar Mitzvah ceremony for boys of the age of thirteen but all congregations have Confirmation for boys and girls on the festival of Shabuot.*

Most scholars agree that the ceremony of Bar Mitzvah as practiced in Orthodox congregations was developed in Germany and not earlier than the fourteenth cen-

tury. See particularly Löw, *Lebensalter*, p. 210 and ff. The ceremony of Bar Mitsvah marks the ritual coming of age, although the Talmud itself does not date the coming of age at a fixed year but bases it upon the physiological evidence of puberty. Indeed some of the later scholars are still in doubt as to whether it was correct to substitute a chronological age for the Talmud physiological test of puberty. See Solomon Luria, "Yam Shel Sh'lomo" to Baba Kamma, 7, 37, quoted by Löw, note 63, p. 410 as follows: "Indeed the Bar Mitsvah ceremony itself does not seem right to me for most of the boys at this age do not have yet the physical evidences of puberty."

But the Talmudic-Midrashic literature does have a few references to the age of thirteen as the beginning of religious responsibility. Pirke Abot V, 24 (this is a later addendum to the chapter), giving the ages of man, says that thirteen is the age "for the commandments." Genesis Rabbah 63, 10 to the verse: "And the boys grew up" (Gen. 25:27) reads as follows: "Rabbi Eliezer said a man must busy himself with his son (to teach him) until the age of thirteen; from then on, he must say: 'Blessed be He Who has freed me from (bearing) the guilt of this one.'" When the ceremony of Bar Mitsvah developed, it became the custom for fathers to pronounce the blessing referred to above in the Midrash. However, Moses Isserles as late as the sixteenth century had strong doubts as to whether it is proper for the father to recite this blessing. See Darke Moshe to Tur Orah Hayyim 225, where he said:

"Mordecai ben Hillel said that a man when he makes his son Bar Mitsvah is in duty bound to recite the blessing: 'Praised be Thou O Lord, etc., Who has freed me from the guilt of this one.' This also is the custom of Jacob Moellin (Maharil) but I do not find this blessing mentioned in the Talmud and it seems difficult to me (to agree) that they should pronounce a blessing that is not mentioned in the Talmud and the Poskim." Hence Moses Isserles in his gloss to Sh.A. Orah Hayyim 225 #2 says that the blessing should not contain the name of God (i.e., since there is doubt whether the blessing is authorized or not); thus one does not say: "'Blessed be Thou O Lord, etc.,' as in all blessings, but merely: 'Blessed be He Who has freed me, etc.'" Abraham Gombiner (*Magen Abraham*) says, *ad loc.*, that it is now the custom for the father to say the blessing when his son is called up to the Torah on the Sabbath and it is also the custom to give a banquet on the day when the son becomes Bar Mitsvah "as on the day when he enters the Huppah to be married."

It is generally understood that a boy of thirteen may begin to put on Tefillin which is thus taken as a mark of religious adulthood. However, even this is not certain. The Talmud says (b. Sukkah 42a) that if a minor is old enough to take care of his Tefillin his father should buy him Tefillin. Isaac ben Abba Mari, of Marseille, twelfth century (*Ittur*), quoted by Joseph Karo (Bet Joseph) to Tur Orah Hayyim 37 says that when the Talmud says a minor it means in this

case a boy of thirteen, but Karo says the Talmud obviously means any minor. However, Moses Isserles in *Darke Moshe*, *ad loc.*, says that it is our custom to follow the opinion of Isaac ben Abba Mari that boys do not put on Tefillin until they are Bar Mitsvah, which is thirteen years and a day. See also Sh.A. Orah Hayyim 37 #3 in which it is significant that Joseph Karo, the Sephardi, gives the Talmudic point of view that any minor who can take care of Tefillin must be provided with Tefillin by his father (he adds "to train him"), while Moses Isserles, the Ashkenazi, in his gloss says: this means after he is thirteen. The present custom is to let the boy put on Tefillin two or three months before his Bar Mitsvah in order to teach him how to use them.

Once the Bar Mitsvah was connected with the putting on of Tefillin it was obvious that it could only apply to boys and not to girls, although it is interesting that Joseph ben Meir Teomim (*Peri Megodim* to Orah Hayyim 225, *Ayshel Avrohom*, note 5), a Galician rabbi of the eighteenth century, asks the question, theoretically of course, why should not the father also recite a blessing that he is free of the responsibility of his daughter when she becomes of age just as he recites such a blessing for his son when he is Bar Mitsvah?

This question would have a practical meaning in Reform Judaism which proclaimed from the very beginning the religious equality of men and women. The very first religious ceremony (Cassel 1810) in-

Bar Mitzvah
 wrong
 Confirmation
 brought
 confirmation

troduced by Reform Judaism was Confirmation, a development of Bar Mitzvah but applied equally to boys and to girls to mark their religious coming of age. Since the ceremony applied to a whole class and not to individuals, it could not take place on the Sabbath near a birthday and a fixed day had to be selected for it. After much experimentation and change, the general Reform practice developed to have the Confirmation Service on Shabuot so that each new generation in Israel accepts its responsibility in Judaism on the same day that Israel received God's Law on Mount Sinai. Out of the custom of calling up the Bar Mitzvah to the Torah, where he would read the Scripture and often give an address, there grew up an elaborate series of prayers and sermonettes given by the children. The custom in many places of the rabbi blessing the Bar Mitzvah was transferred to Confirmation, and even the custom of the father of the Bar Mitzvah giving a feast is observed in rather elaborate Confirmation receptions which are still the rule.

CONSECRATION . . . A Consecration ceremony to serve as an induction for young children who begin their religious instruction has in recent years been added to the services for the last day of Sukkot (Shemini Atseret).

The Consecration ceremony which has grown popular in many Reform congregations is based upon the

traditional ceremonies of Simhat Torah. Since Reform Judaism does not observe the non-Biblical extensions of the Biblical festivals (see above pp. 16 ff.), Simhat Torah, which is the extension of Shemini Atseret, is merged into Shemini Atseret. The traditional observances of Simhat Torah include a processional of the congregation, carrying the Scrolls of the Law, around the synagogue, reading the last section of Deuteronomy and the first section of Genesis, and calling up the children of the congregation to the Torah. The custom of calling the children to the Torah is based upon Deuteronomy 31:12. Moses is commanded to assemble the people on Sukkot of the Sabbatical year to hear the reading of the Torah. The verse reads: "assemble the people, the men and the women and *the little ones*." (Cf. Minhage Yeshurun, ed. Lemberg, 1930, p. 120.)

In the Consecration ceremony the Torahs are carried in procession, the traditional sections are read and the young children are called up to the platform and receive the blessing of the rabbi. Thus both the beginning and the end of the child's religious school life are marked by a religious ceremony on a festival: the beginning by the Consecration ceremony on Sukkot, and the end by the Confirmation on Shabuot.

MEMORIAL SERVICE . . . *The enlarged Memorial Service on the Day of Atonement is characteristic of Reform Service.*

There are only sparse references in Tannaitic times to the practice of praying in behalf of the dead. The second book of the Maccabees tells that Judas Maccabeus offered sacrifices in behalf of the dead: "The sum of two thousand drachms of silver he sent to Jerusalem to offer a sin-offering . . . for if he had not hoped that they that were slain should have risen again, it had been superfluous and vain to pray for the dead. . . . Wherefore he made a reconciliation for the dead that they might be delivered from sin." (II Maccabees 12:43-45.) In Sifre the following comment is made to the verse in Deuteronomy 21:8, "Forgive O Lord Thy people Israel whom Thou hast redeemed": the phrase "forgive Thy people" refers to the living, and the phrase "whom Thou hast redeemed" refers to the dead (Sifre Deuteronomy #209).

These passages indicate merely that in the time of the Second Temple many felt that one might well offer prayers in behalf of the dead, but there is no indication of the existence of any fixed custom or regular ceremony of prayer for the dead. It is noteworthy that both passages agree that the prayer in behalf of the dead should be prayers of atonement and forgiveness of sin. It was natural, therefore, that when this older sentiment of praying for the dead finally crystallized into a fixed synagogue ritual, it was made part of the services of the Day of Atonement.

The earliest references to regular prayer for the

dead date from the Middle Ages. Mahzor Vitry, p. 392, speaking of the Yom Kippur services, says (after the description of the Scriptural reading for the day): "We pledge charity in public for the living and for the dead; and in all Germany they do not pledge charity for the dead except on this day; and why do they pledge charity on the Day of Atonement for the dead? Because it is a day of forgiveness and pardon and it is an atonement for them." The Siddur Rashi #214 makes the same statement but omits the explanation of the reason for this custom being on the Day of Atonement. (See especially the editor's note to Siddur Rashi and also other passages quoted in Agnon *Yamim Noraim*, pp. 321-3.) See *Magen Abraham* and *Magen David* to Orah Hayyim 621 #6 who explain the custom of giving charity in *behalf* of the dead as follows: "God who searches the heart knows that if they had been still alive, they would have given."

The twelfth century sources do not give the texts of the Memorial Prayers which later became current for this service. The prayer Av Horachamim was written probably during the Crusades (see Baer, *Avodas Yisroel*). It is likely that this prayer, written in honor of the martyrs of Israel during the Crusades, was the inspiration of the later prayers in honor of the dead such as the Hashkabah of the Sephardim (recited every Saturday), the Mi Sheberak, and El Male Rahamim and the Yizkor from which the popular name of this Memorial Service is derived.

Although the prayer for the dead was originally

confined to the Day of Atonement, the Jews of Eastern Europe added it also to the services of the last days of Pesach, Shabuot and Sukkot. In the *Union Prayerbook*, Newly Revised, the Yizkor Service was provided for the seventh day of Passover, but in most Reform prayer books the only Memorial Service is on the Day of Atonement which is its original place.

This Memorial Service differs considerably from the Yizkor as observed in Orthodox synagogues. In the Orthodox service, children and those whose parents are still alive, leave the synagogue. There is also a custom that those who have been bereaved during the past year separate from the rest of the worshippers and recite the Yizkor prayers alone. (Agnon *Yamim Noraim*, p. 321.) These customs are not observed in the Reform Memorial Service. Although many people who are not bereaved refrain from attending this service, many others who are not closely bereaved do attend since the Memorial Service is looked upon as a service of reverence by the entire congregation for all the departed. Those who have been bereaved during the past year are, of course, present. The service is much more elaborate than the Orthodox Hazkarat Neshamot (Yizkor). The moral ideals of human life lived in the consciousness of eternity, the hope for immortality and reverence for the departed, our own kin and all the righteous, constitute the themes of the Service. At the end of the Service the names of those who have died during the past year are read. This has long been the custom of the Sephardim

(*Jewish Encyclopedia*, art. "Hazkarat Neshamot"); and also among the Ashkenazim some communities read the list of the departed not on Yom Kippur but on the seventh of Adar which is observed as the anniversary of the death of Moses (see Eliezer Deutsch, *Duda-e Hasadeh*, Responsum #39). The Memorial Service concludes with the reading of the Kaddish.

TORAH READING . . . *The Torah is read on Sabbath and holidays. Two members of the congregation are called to the Ark to unroll and roll up the Torah.*

Originally the entire Torah was read through in three years. However, in Babylon the custom developed to read through the entire Torah in one year (b. Megillah 29b), and this Babylonian custom became the prevalent one everywhere. Since in modern times it was difficult to obtain the close attention and the uninterrupted decorum of the service during the lengthy reading of the entire weekly portion, the custom arose in Reform congregations to shorten the reading. Some congregations endeavored to return to the older Palestinian custom of dividing the Torah into the one hundred and fifty-four shorter portions of the triennial cycle instead of the long fifty-four portions of the annual cycle. This method of shortening the Torah reading was impractical because the weekly portions and the names of the Sidrot would then be different from those read in the Orthodox

congregations all through the Diaspora. The modern Reform custom combines the annual and the older Palestinian triennial cycle. The portion that is read is the regular Sidrah of the annual cycle which is read everywhere but this weekly portion is divided into three sections, the presumption being that the first portion of each Sidrah will be read one year and the second portion of each Sidrah the second year and the third portion the third year. (See *Union Prayerbook*, Newly Revised, pp. 387 ff.) The Haftorah, the prophetic portion, that is read is the regular one that is read in the Orthodox synagogues except that it is read in English. The *Union Prayerbook*, Newly Revised, now provides three Haftorot for each week corresponding to each of the three parts of the weekly Sidrah. Some of these readings are from the Hagiographa. It is interesting to note that in Babylon portions from the Hagiographa were read as the Haftorah on Sabbath afternoons (b. Sabbath 116b).

The custom of calling men up to participate in the reading is an ancient one. Originally the men not only recited the blessings but read the portion. In later times they merely recited the blessing before and after the reading. The number of men who read on Sabbath, on holidays, on fast-days, was fixed. (See m. Megillah IV; see also Sh.A. Orah Hayyim 137.) In addition to the reading of the portion, the task of rolling up the Torah was likewise considered an honored one. (See b. Megillah 32a.) Rabbi Jochanan

says: "Of the ten who read the Torah the greatest of them rolls the Sefer Torah and he who rolls it receives the reward of them all." Therefore in later years the privilege of rolling the Torah was often bought and the money used for congregational purposes. Tur Orah Hayyim 147: "And they are accustomed in Germany to buy the privilege of rolling the Torah for a great price." (See also Sh.A. Orah Hayyim 147.) Besides rolling the Torah it is customary to lift up the Torah (hagboho) so that the people may see the writing on it. The man who lifts up the Torah proclaims the words (Deut. 4:44): "This is the law which Moses placed before the children of Israel." (See Soferim 14, 14.) See also the comment of Ramban to Deut. 27:26: "Cursed be he who does not uphold the words of this Torah." Ramban says: "It seems to me this refers to the Hazzan who does not hold up the Sefer Torah in front of the congregation to show its writing to all as is explained in the tractate Soferim that we lift it up and show its writing to the people, etc."

While in Reform congregations the custom of calling people up to recite the blessings over the Torah has generally dropped out, the custom of calling men for the honored task of rolling up the Torah and raising it before returning to the Ark is always observed.

In Orthodox congregations the Torah is read regularly not only during the Saturday morning services, but also during the afternoon services on Saturday

and the morning services on Monday and Thursday. Since Reform congregations do not usually gather for public services on Saturday afternoon and Monday and Thursday mornings, these public readings from the Torah have dropped out. However, since in most Reform congregations in America the service most largely attended is the late Friday Evening Service, the *Union Prayerbook*, Newly Revised, has provided this service with a permissive Torah reading. It is interesting that the Committee on Army and Navy Religious Activities of the Jewish Welfare Board has likewise permitted (during war-time) the reading of the Torah on Friday evening in the army camps.

SERMONS . . . *A sermon is preached either at the Friday Evening Service, at the Saturday Service or the Sunday Service.*

This is contrary to the Orthodox custom. For many centuries the Ashkenazim have not had regular preaching every Sabbath. The rabbi preached twice a year, on the Sabbath before Passover (Shabbat Hagadol) and the Sabbath before the Day of Atonement (Shabbat Shuvo). Occasionally on the Sabbath afternoon a travelling preacher (maggid) would deliver a sermon. In some communities there were regular Sabbath afternoon sermons but not as part of the service.

However, this Orthodox custom of restricting the

sermon to only an occasional part of the service or keeping it out of the regular part of the service, is a remnant of a much more complete system of preaching. Preaching as an expounding of Scripture and as a regular part of the Sabbath and Holiday services was one of the most important contributions of Judaism to the enlightened religions of the world. In the time of the Second Temple there was regular preaching as part of every Sabbath and Holiday Service. (See Zunz, *Gottesdienstliche Vortraege*, Chapter 20.) These sermons were in the language of the people and outside of Palestine in the Greek Diaspora were in Greek. (See also Maybaum, *Juedische Homiletik*, pp. 4 & 5.) Regular preaching as part of the service continued in Spain but during the Middle Ages disappeared in northern Germany, leaving only the occasional sermon (on the Sabbath of Repentance and the Great Sabbath, etc.) as is the modern Orthodox practice. Reform Judaism returned to the original Jewish practice and took up again the regular sermon in the language of the people.

VERNACULAR PRAYERS . . . *The Reform prayer books have the principal prayers of the service in Hebrew, the historic language of prayer, but they provide every prayer with a translation in the vernacular. Many of the prayers (those of modern origin) are given only in English. The Prophetic portion on Sabbath and Holidays is read in English.*

After the return from Babylon in the sixth pre-Christian century, the knowledge of Hebrew began to diminish among the Jews, and Aramaic, the international language in western Asia, became the vernacular of the people. Therefore it came to be a regular part of the Sabbath and Holiday services to have a translator translate the Scripture into the Aramaic vernacular. (See *Jewish Encyclopedia*, Vol. XIII, art. "Meturgeman," and Elbogen, *Gottesdienst*, 186 ff.) As for the prayers themselves the traditional law is clear that they may be uttered in any language that the worshipper understands. This is plainly indicated in the codes. See Solomon B. Freehof, "Devotional Literature in the Vernacular," *C.C.A.R. Yearbook*, Vol. XXXIII, pp. 380-382, from which the following is quoted:

In the time of the Mishnah when Hebrew was still the language of scholars but had ceased definitely to be the language of the people in general, the need of understanding the meaning of the prayers was fully appreciated. We find the following law in Mishnah Sotah (VII, 1): "These may be said in any language: the Shema, the Tefillah and grace after meals." Thus we see that the chief elements of the daily service, the Shema and the Tefillah need not be said in Hebrew. The Babylonian Talmud (b. Sotah 32b) discussing the question of saying the Shema in the vernacular adduces a Tannaitic source in which the opinion of the majority of the teachers is that the Shema may be said in any language because the word Shema, "hear" means also "understand," hence implying

that the Shema should be said in any language which the worshipper understands.

In the discussion of the question of the language in which the Tefillah is to be said, the Talmud (b. Sotah 33a) says that the Tefillah may be uttered in the vernacular because prayer is a plea for mercy and man may give voice to it in any language he wishes to use. The Palestinian Talmud (j. Sotah 21b) states that the Tefillah should be said in the vernacular so that a man may be able properly to add his personal petitions to the regular Tefillah.

This opinion is accepted by all the later authorities. Thus Maimonides (Hilkot Keriat Shema, II, 10) says that a man may say the Shema in any language which he can understand. Jacob b. Asher (in Tur Orah Hayyim, No. 62) and Joseph Karo (Sh.A. Orah Hayyim 62, 2) give the same decision. All three authorities add that in whatever language the Shema be recited, the worshipper must be careful to pronounce the words as carefully as the Hebrew words must be pronounced. The purpose of this additional regulation seems to be to prevent the vernacular prayer itself from being recited mechanically and without understanding.

As to the Tefillah, Jacob b. Asher (Tur Orah Hayyim 101), and Joseph Karo (Sh.A. Orah Hayyim 101, 4) cite three varying opinions. First, that the public Tefillah may be said in any language but that when the regular Tefillah is recited privately it must be said in Hebrew; second, that the regular Tefillah whether uttered publicly or privately may be said in any language, but that private petitions uttered for various personal needs must be said in Hebrew; and third, that any prayer, public or private, the regular Tefillah or personal peti-

tions for any occasion may be said in any language, except Aramaic. Jacob b. Asher gives this last opinion as that of his father and seems to prefer it. The whole law as to the use of the vernacular is clearly expressed in Tosafot to Sotah 32a, namely, that the Shema, the Tefillah and the grace after meals may be said in any vernacular provided the worshipper understands the vernacular he uses. (Cf. also the Ba'er Heteb to Shulhan Aruk Orah Hayyim 62, 2.)

Turning for a moment from the regular legal codes, we find the following admirable statement on the use of the vernacular in the Sefer Hasidim (ed. Wistinetzki, p. 9): "If people who do not know Hebrew come to you, tell them to study the prayer book in the language which they can understand for prayer depends upon the understanding of the heart. If the heart does not know what is uttered by the mouth, of what avail is it? Therefore it is better to pray in the language which one understands."

In the sixteenth century there were many books of private devotion written in the language of the people. (See above article.) At this time there were likewise many translations of the prayer book. (See Zunz, *Ritus*, 154-5.)

When, however, the Reform movement began, the Orthodox rabbinate objected strongly to the prayers in the language of the people. In 1818 when the first Reform prayer book was published in Hamburg, the Orthodox rabbinate of Hamburg gathered a group of responsa from the Orthodox rabbinate of Europe

denouncing the *Hamburg Reform Prayer Book* and the entire plan for Reform services. (*Ele Dibre Haberit*, Altona, 1819.) In this collection of responsa, page 10, the great Orthodox authority, Moses Sofer, gives his objections to prayers in the vernacular. He argues as follows:

The men of the great Synagogue (after the return from the Exile) wrote the prayers in pure, fine Hebrew even though many of the people in those days did not speak Hebrew. Why did they write it in Hebrew which the people in those days did not understand? Among them were prophets and they knew directly from God that the prayer cannot be in any language we choose and never will it be able to serve as a complete substitute for the sacrifices in the Temple. In order that it might serve as a partial substitute, they wrote it very carefully and counted every word and letter (i.e., so that one day when the Temple would be destroyed and the sacrifices cease, the prayer in Hebrew, with its exact number of words and letters, could serve as a partial substitute for the sacrifices). It is utterly impossible (he continues) to translate their meaning into any other language. But if we recite the words exactly as the men of the great Synagogue ordained them, then even though we do not know their meaning, nevertheless our prayer is favorably received, which is not so when we pray in another language. . . . Besides Hebrew is God's language in which He gave us His Torah.

The honored antiquity which Moses Sofer ascribed to the Orthodox prayer book could be properly ap-

plied only to a very small portion of it, chiefly the Shema and the Tefillah. The bulk of the Orthodox prayer book underwent constant change up to the age of printing. It is interesting to note what the pupil of the great Jacob Moellin (Maharil) said of his teacher's attitude to the prayers: "I, the author, heard from the lips of the saintly Maharil (when I studied the Tractate Yoma—it was in the year 5186, the year before he was summoned to the heavenly academy), he said that if God would spare him to pray at the next Awesome Days that he intended to change still more words in the Rosh Hashanah and Yom Kippur service than he did hitherto." (Sefer Maharil, end of Hilkot Rosh Hashanah.)

Of course, Moses Sofer wrote his unyielding opinion after two centuries of Cabalistic study had counted every word in most of the traditional prayers and found some special meaning in their very number. Also he felt the necessity, living as he did at the dawn of modernism in Jewish life, to combat it by being all the more strict. However, in spite of all the objections of the famous rabbinic scholars quoted in *Ele Dibre Haberit*, Reform prayer books increased in number and many prayer books were written, even for congregations that do not call themselves Reform, making use of English translations and providing for the use of the language of the people not only to accompany the standard traditional Hebrew prayers but also as additional meditations and hymns during the regular services.

MUSIC . . . *The services are accompanied by instrumental and vocal music (organ and mixed choir).*

The question of music in the synagogue, especially organ music, has been the subject of the most enduring debate between advocates of Orthodoxy and advocates of Reform. Ever since Israel Jacobson, the pioneer lay Reformer, installed an organ in the synagogue which he opened in Seesen, Germany, in 1818, the debate has continued. As late as 1919 Professor Samuel Krauss of Vienna wrote a pamphlet in defense of the use of the organ in the synagogue. The Orthodox arguments are first that playing any musical instrument is prohibited on the Sabbath and holy days and that even to engage a non-Jew to play the instrument is considered a disturbance of Sabbath rest (Shevus). The Shulhan Aruk (Orah Hayyim 338, 1; 338, 2) says that it is permitted to have a non-Jew play an instrument at weddings. But that is specifically at weddings. That would not apply, according to the Orthodox opinion, to religious services. Second, since we are in mourning for the destruction of the Temple, music in general is forbidden (except of course for weddings). (See Sh.A. Orah Hayyim 560 #3.) Third, that the organ, especially, is a characteristic Christian religious instrument and so is forbidden by the principle of Hukat Hagoi. A complete summary of the Orthodox arguments against instrumental music in the synagogue, see Hama-chanayim, N. Y., 1888, pp. 215-222.

The arguments of the modernists are that the playing of the instrument is for the purpose of fulfilling the mitsvah of worship and therefore the prohibition of Shevus, disturbing the Sabbath rest, does not apply. (To which Moses Sofer answers that the prayer is indeed a mitsvah but without music. *Ele Dibre Haberit*, p. 10. See also answer of Mordecai Benet, p. 15, *ibid.*) As for mourning for Jerusalem, that law was not universally observed as can be seen from the fact that the synagogue in Prague had instrumental music, even an organ, although, indeed, it was not played after the first half of the Friday evening services. As for the objection of Hukat Hagoi, imitating Christian procedures, this principle applies only to such matters as are essential to Christian worship and not such instruments or melodies which are not inherent in Christian worship. Thus, for example, Joel Sirkes (sixteenth century) in his Responsa No. 127 end, says that only those melodies which are an inherent part of Christian worship are forbidden in the synagogue but not all melodies which they use. Some of them belong to general music and these we may use.

Besides, the instrumental music in general as a part of worship and the organ particularly was used in the Temple at Jerusalem. (See b. Arakin 111a where the magrefah [organ], a musical wind instrument with many pipes and stops, is clearly described.) On the other hand, thousands of Christian churches do not have an organ. Many a Christian congregation in

America was founded by dissenting groups who broke away from an older church congregation because the older congregation installed an organ, which the dissenters considered un-Christian and papish; by the way, as Krauss points out, even the papal chapel in Rome has no organ. It is much more correct to say that the organ is not an essential Christian religious instrument but to the extent that Christianity uses it, it was borrowed, like many other elements in Christian worship, from a Jewish source. The best summary of the Reform arguments on this question is to be found in *Zur Orgelfrage*, by Samuel Krauss, Vienna, 1919.

So the debate has gone on for more than a century and in the meantime instrumental and vocal music have become a permanent part of Reform Jewish worship.

BAREHEADEDNESS . . . *The congregation and the rabbi worship with uncovered head.*

Perhaps the bitterest dispute in the early days of Reform Judaism in America involved the question of worshipping bareheaded. Yet strangely enough there is no clear basis in Talmudic law for the present Orthodox custom of men worshipping with covered head. There is, of course, considerable opinion in the Talmudic literature that *women* should cover their heads but almost none that men should do so.

The Palestine Talmud has no such law and in the Babylonian Talmud there is hardly more than a statement concerning Rab Huna that he would not walk four cubits without his head covered for, as he said, "The Shekinah is above my head." (b. Kiddushin 31a.) The fullest discussion of the entire subject of bareheadedness is found in the detailed responsum of Jacob Z. Lauterbach on the same subject in the *C.C.A.R. Yearbook*, Vol. XXXVIII, pp. 589-603.

Lauterbach proves that in Palestine it was not considered wrong in any way to go about with uncovered head, whereas in Babylonia it developed as a mark of piety and respect to cover the head. In Spain, which was under the influence of the Babylonian Talmud, the authorities decided that it is wrong to pray without covering the head. (See *Yad*, *Hilkot Tefillah* V, 5.) Joseph Karo (*Sh.A. Orah Hayyim* 91 #3) merely says: "There are some who say that it is forbidden to mention the name of God with uncovered head and some who say that it is forbidden to enter the synagogue with uncovered head." Karo's statement (*Sh.A. Orah Hayyim* 2 #6), that a man should not walk four cubits with uncovered head, is described by Abraham Gombiner (*Magen Abraham* to *Orah Hayyim* 91 #3) as merely describing special piety.

While the Spanish authorities (influenced by Babylonian customs) were in favor of forbidding prayer with uncovered head, the French authorities (influenced by Palestinian customs) seemed to have

no objection to bareheadedness in prayer. Abraham of Lunel (*Ha-manhig Tefillah* 45) describes the custom of praying with covered head, of which he approves as the custom and practice of the Jews in Spain. And Isaac of Vienna (*Or Zarua* II #43) says expressly that it was the custom of French rabbis to pray with uncovered head (see *Lauterbach*, p. 599). Many of the great later authorities say definitely that there is no clear law against worshipping without a hat. Solomon Luria of the sixteenth century in his *Responsum* #72 says: "I do not know of any prohibition against praying with uncovered head." And Elijah Gaon of Vilna says in his commentary to *Sh.A. Orah Hayyim* 8 #6 that according to Jewish law it is permitted to pray without a hat but it is good manners to cover one's head (*Lauterbach*, p. 601).

Dr. *Lauterbach* sums up his *responsum* in these words (p. 590):

The practice of covering the head when entering a synagogue and when reciting prayers or performing any religious ceremony is not based upon any Talmudic law and cannot be supported by any express statement in the Talmud. The practice is merely a custom that first appeared among the Jews in Babylon.

[Also page 602]: In summing up the discussion, I would say that from the point of view of Jewish law or ritual, there can be no objection to either covering or uncovering the head in the synagogue when praying or when reading the Torah. The custom of praying bareheaded or with covered head is

not at all a question of law. It is merely a matter of social propriety and decorum.

[Page 603]: Although in the last century the question of "Hat on or hat off" was the subject of heated disputes . . . we should realize that this matter is but a detail of custom and should not be made the issue between Orthodox and Reform.

KOHANIM AND LEVITES . . . *The distinction between Priests, Levites and Israelites is no longer maintained. The rabbi, whether he be of priestly, Levitical or Israelitish descent, pronounces the priestly blessing on all occasions.*

In Orthodox law one of priestly descent still has certain special religious status and certain privileges. Before the end of the Second Commonwealth both the Priest and the Levite were supported by the prescribed donations of the people, i.e., by taxation. The priests officiating at the sanctuary ate the meat of the sin offering, etc. All priests, whether their section of the priesthood (the priesthood was divided into twenty-four "watches") was actively officiating or not, received Hallah, a portion of the dough (Numbers 15:18-21) and the heave-offering (Deut. 18:3-4). The Levites received the tithe and also separate cities were set aside for their residence. After the destruction of the Temple the privileges of the priests and Levites gradually diminished. Nowadays the present Orthodox privileges and duties of the priest are, as

to duties: he may not be defiled by coming into contact with the dead (see p. 118); he may not marry a divorced woman or a woman who has had Halitsah; he is called upon to recite the priestly blessing in the synagogue on the holidays at the close of the Musaf Service. As to privileges: he is the first of the group of men to be called up to the Torah (b. Gittin 59b) and he receives a fee for the redemption of the first-born sons. The Levites nowadays have only the privilege of being called up second among the men called up to the Torah (b. Gittin 59b) and do not need to have their first-born sons redeemed by a priest (Sh.A. Yoreh Deah 305 #18) (as of course the priests themselves do not need to have their first-born sons redeemed).

The duty of the priests to bless the people on holidays represents a gradual restriction of past custom. In the Temple in Jerusalem the priest blessed the people every day after the regular offering. Also the priest blessed the people every day in the synagogue after the Tefillah which took the place of the regular offering. Then the priest blessed the people only in the morning service after the Tefillah, which is still the custom in southern Arabia (Yemen). Then he blessed them only on Sabbath and holidays, which is the custom of the Spanish ritual. Then only on holidays, which is the north European ritual. The Reform custom simply completes this process of diminishing the privilege of the priest and has the rabbi recite the priestly blessing, as indeed the reader of

the service recites it every day at the close of the Tefillah in the Orthodox service, too.

In general the priest has a very doubtful status nowadays in Orthodox law. Many great authorities consider that the priest nowadays is not to be considered as having true priestly status inasmuch as the genealogy tables are no longer kept as in ancient times and a priest may very easily lose his status as a priest. A priestly family may easily lose its status and become "profaned" (Halal) if, for example, there is evidence that one of the ancestors married a divorced woman. Therefore the priests nowadays are looked upon as of doubtful status. See particularly the responsa of Isaac bar Sheshes (1326-1408) #94 (near the end), this famous Spanish authority says that priests nowadays no longer keep their genealogical tables (i.e., their priestly descent is open to doubt). So too Samuel de Medina (Rashdam) the great Turkish Talmudist (1505-1589) in his responsa (Eben Haezer #235) says that priests nowadays are not "sure" (Vaddai) priests, and that it is only due to custom (not as their legal right) that we call them first to the Torah reading. Also Abraham Gombiner (*Magen Abraham*) and Ba'er Hetev who quote older authorities to Sh.A. Orah Hayyim 457 #2. In explaining why the Hallah, the portion of the dough which was once given to the priest is now burned up by the housewife, Abraham Gombiner says: "because we do not consider him to be a sure priest. Perhaps one of his maternal ancestors had been profaned from

the priesthood." See also Jacob Emden in his Responsa I, 155, with regard to the redemption of a first-born son. He is of the opinion that the priest *must* return the redemption money since those whom we call priests nowadays are different from those who were priests in the past whose genealogy was sure, and that the only reason that we redeem first-born sons through them is that we have not anybody else with whom to do it, and that perhaps it might be well for a father to redeem his son through as many priests as he can find and perhaps thereby he might come across one of true priestly descent. For a full discussion of the subject of the status of the priest nowadays, see the responsum of Zevi Hirsch Chayes in his *Darke Hora-ah*, pp. 15B ff.

Reform Judaism, in line with its general principle of equality of religious status, has abolished all such distinctions of status as Priest, Levite and Israelite.

EQUALITY OF WOMAN . . . *Women have full religious equality with men in the Reform service. They are counted in the minimum quorum of ten required for religious services (the minyan), and on special occasions also participate in conducting the services.*

Judaism has from the very beginning endeavored to raise the status of women from the low status which was theirs in the ancient Orient. The reverence which the Bible commands for one's mother as well

as for one's father, the honor accorded to the "woman of valour" in the last chapter of the Book of Proverbs, and the general development of Jewish law, all are evidence of this endeavor. For the gradual rise of the status of women with regard to the laws of marriage and divorce, see page 102.

There are, however, many residual disabilities which women still suffer in Jewish law. There are many religious commandments which only a man is required to fulfill. The whole group of positive commandments "which are dependent upon time" are not incumbent upon women, that is, commandments such as the lulab, sukkah, etc. (See m. Kiddushin I, 7.) A woman is not eligible as a witness in court (m. Rosh Hashanah I, 8). Yet, although in general a woman is not eligible to give testimony in court, she is permitted to testify as to the death of her husband in a distant land (m. Yebamot I, 5). This special relaxation of the law of the ineligibility of women to be a witness was made in order to help protect the woman from being an Agunah. See page 105 and also the comment of Maimonides in Yad, Gerushin XIII, 29. There is considerable debate as to whether women may be allowed to study the Torah (m. Sotah III, 4). However, it is noteworthy that many women did study the Torah and there were many famous women scholars all through the Middle Ages. See Abraham's *Jewish Life in the Middle Ages*, new edition, pp. 366 and ff. Women also were not to be included in the minimum quorum of

ten needed for public worship, the minyan. See Sh.A. Orah Hayyim 55 #4, although according to the opinion of some authorities the male child could be included (*ibid.*) and even a man who is asleep during the services could be counted (*ibid.* 55 #6). Women are not in duty bound to recite the Shema (since it is a positive commandment fixed by time) but are in duty bound to recite the Tefillah (the petitional part of the services). (m. Berakot III, 3 and b. Berakot 20b.) Nevertheless there was a vast prayer literature for women in the vernacular. Although a woman could not be counted in the minyan and although many authorities have grave doubts whether she should be taught the Torah, nevertheless, the Talmud says that she may be called upon the Sabbath as one of the readers of the Torah during the services (b. Megillah 23a). See also Siddur Rashi #267, that many of the commandments which women are not *commanded* to do (i.e., those positive commandments which are dependent upon time) they *may* do if they desire. The passage reads as follows:

Thus taught Rabbi Isaac the Levite, may the memory of the righteous be a blessing: We do not prevent women from reciting the blessing over the lulab and the sukkah. The fact that the Talmud says that women are free from positive commandments that are fixed by time means merely to specify that they are not in duty bound to obey those commandments but if a woman *desires* to fulfill these commandments, she may do so and we do not prevent her . . . so you may know from the fact that

the Talmud says that all may be counted for the number of seven including a woman (i.e., the number of seven called up to the Torah), that evidently a woman may come up to the Torah and recite the blessings although she is free from duty of the study of the Torah. Thus you must conclude that if she *desires* to fulfill these positive commandments, she may do so.

It is evident that those inequalities which women still endure under the Jewish law must be looked upon more as remnants of the past than any evidence of disrespect for women in Jewish law. The well-known benediction at the beginning of the Orthodox morning service: "Praised be Thou O Lord that Thou hast not made me a woman" is understood by the commentators to mean: praised be Thou O Lord that Thou hast given me, a man, the privilege and the responsibility of obeying more commandments than women are required to obey. The Reform movement completes the process of the increasing rights of women and declares women equal in all legal religious matters to men. Hence they are counted to the minyan and in Reform religious schools girls are given the same Jewish education as boys.

WOMEN'S GALLERY . . . *There is no separate gallery for women in Reform temples. Men and women sit together at worship and in many temples there are family pews in which the entire family, father, mother and children, worship together.*

This is contrary to the Orthodox custom. Orthodox synagogues for many centuries have had a separate section in the synagogue for women. Sometimes it is a separate room as in the old Altneuschul in Prague, but generally it is a gallery. In many Orthodox synagogues the gallery is provided with a curtain which completely cuts off the women worshippers from the sight of the men worshipping below in the main part of the synagogue.

In Biblical times there was no attempt to separate women worshippers from men. Women as well as men could bring their sacrifices to the Tabernacle in the wilderness (Lev. 13:6). At the Sukkot festival in the Sabbatical year when the Torah was to be read to all the people, Moses specifically says: "Assemble the people, the men and the women and the little ones that they may hear, that they may learn, etc." The Torah was thus read to the assemblage of men, women and children.

When Ezra assembled the people after the return from the Exile to read them the Torah on the first of Tishri, we are told (Nehemiah 8:2 & 3): "Ezra, the priest, brought the law before the congregation, both men and women and all that could hear with understanding upon the first day of the seventh month and he read therein . . . in the presence of the men and the women."

When the Second Temple was built there was a separate enclosure called "The Court of Women" (m. Middot II, 5). But the women were not isolated from

the men in this section as we can see from the fact that there were four enclosures on each of the four corners of this Court of Women in which certain religious activities for men took place. One of the corners of the Court of Women was for the Nazarites, another for the priests to examine the wood that was used on the altar, one was for the lepers and one was for the storage of oil and wine. Thus men were constantly present in the Court of Women. On one day of the year, on the evening following the first day of Sukkot, the great Water Festival took place in the Court of Women. (m. Sukkot Chapter V.) A gallery was built around the Court of Women for this occasion and the women sat in the gallery. (b. Sukkah 51 b. See also Bertinoro to m. Middot II, 5.)

This reference to the gallery built in the Court of Women during the great crowding at this particular celebration seems to be the only reference in Talmudic literature to a woman's gallery. There is no clear law in the later codes that there should be a gallery in the synagogue. The only possible legal reference would be that in the Sh.A. Orah Hayyim 75 #1 & 2, which says that the prayers may not be read in the presence of a woman who is indecently exposed. But that can hardly be a legal basis for this architectural arrangement of the synagogue.

However, although there is little or no specific reference to the gallery in the legal codes, the custom became wide-spread. Modern Reform congregations, because of their principle of the full religious equality

of men and women, abolished the seclusion of women in the synagogue and provided the family pew in which the entire family sits together at worship. See article "Frauenscul," *Jewish Encyclopedia*, Vol. V; and Löw, *Ges. Schriften*, Vol. IV, pp. 72 ff.

MARRIAGE AND DIVORCE

FORBIDDEN DECREES . . . *The Biblical list of relatives who are forbidden to marry each other as well as the rabbinical amplification of that list, is strictly adhered to, but the special laws referring to the marriage of priests are no longer held to be binding.*

The Biblical list of relatives whom a man is forbidden to marry is given most completely in Leviticus, Chapter XVIII. These relatives, forbidden either because of consanguinity or affinity (i.e., because of marriage) are: (1) mother, (2) mother's sister, (3) father's wife (i.e., stepmother), (4) father's sister, (5) father's brother's wife, (6) daughter (not expressly forbidden, but the prohibition is taken for granted since granddaughter is forbidden), (7) daughter's daughter, (8) son's wife, (9) son's daughter, (10) sister or half-sister, (11) brother's wife (i.e., if she had children and therefore there was no levirite responsibility involved), (12) wife's mother, (13) wife's daughter, wife's sister (during wife's lifetime), (14) wife's granddaughter. With regard to those of the above prohibitions which are based upon marriage (i.e., father's wife, father's brother's wife, son's wife, wife's mother, etc.), the rabbis declare that betrothal is equivalent to marriage with regard to bringing the law of incest into application. That is, if the father is betrothed, the betrothed woman is considered to

be already the son's stepmother and therefore is forbidden to him by the laws of incest (cf. m. Sanhedrin VII, 4, and Maimonides Issure Biah 2, 1). Of course, betrothal in the Talmudic sense means much more than our present engagement (Tena'im). It is the preliminary marriage ceremony which in ancient times took place as much as a year before the Kiddushin. Nowadays, this ancient betrothal (which legally although not physically was considered marriage) is combined with the Kiddushin (hence two sets of blessings are used in the Orthodox marriage ceremony). The law applies not only to the betrothed wife but also to the widowed wife, therefore a man may not marry his widowed stepmother, the widowed wife of his father's brother, etc. (Maimonides Issure Biah 2:1 & 7.)

The Biblical list of forbidden kin was widely extended in rabbinical law. To the Biblical prohibition of marriage to the wife's mother they added a prohibition against the wife's grandmother. They considered this prohibition to be Biblical (m. Sanhedrin IX, 1).

In addition to this prohibition, they have added others by legislation, such as mother's mother, father's mother, wife of father's father, wife of son's son, wife of daughter's son. This list of prohibited degrees is supposed to be infinite in the ascending and descending scale. Then R. Hiyya added an additional list of prohibited degrees (e.g., son's son's daughter, son's daughter's daughter, etc.). According to Maimonides,

this list of R. Hiyya is not to be extended ad infinitum but stops with the specific relatives mentioned. (For full discussion of the laws of Incest see especially Epstein, *Marriage Laws in Bible and Talmud*, Chapter V; also Mielziner, *Jewish Law of Marriage and Divorce*, 34-38; and *Jewish Encyclopedia*, article "Incest.")

There is a clear distinction between the status of a "marriage" which defies the Biblical list (Aroyos) and that of a marriage which defies the rabbinical addition to the Biblical list (i.e., Sheniyos). The marriage in violation of Aroyos (Biblical degrees) is null and void (En Kiddushin Tofsin) b. Kiddushin 67b bottom; Yad, Hilkot Ishus 4:12; Sh.A. Eben Haezer XV, 1. A child born of such a union is a mamzer. However a marriage in violation of Sheniyos (the rabbinical degrees) is not void, but must be voided by a divorce. A child born of such a union is legitimate (Yad, Hilkot Ishus 4:14; Sh.A. Eben Haezer XV, 1).

The Canon law of the Catholic Church greatly enlarges the list of prohibited degrees. "The few and definite prohibitions of the Roman and the Jewish law were indefinitely extended, until in 506 the Council of Agde laid it down that any consanguinity or affinity whatever constituted an impediment" (*Encyclopedia Britannica*, article "Marriage," Vol. XVII, p. 754 b). Later European law gradually diminished the number of degrees prohibited in Canon law. Nevertheless in England and in most of the United States there are still degrees of consanguinity or

affinity permitted by Jewish law but prohibited by civil law. Thus Jewish law permits marriage of first cousins (Sh.A. Eben Haezer XV, 17). This is prohibited by a large number of states. Jewish law permits and even commends marriage between uncle and niece (b. Yebamot 62b bottom; Eben Haezer II, 6, note of Isserles), a marriage which is prohibited in a number of states. Until recently marriage with a deceased wife's sister was forbidden by English law or by the laws of the state of Virginia. The Biblical law (Leviticus XVIII, 18) prohibits marriage to one's wife's sister when the wife is still alive. Thus if he has divorced his wife, he may not marry her sister till the divorced wife die. After the wife is dead there is no prohibition against marrying her sister (m. Yebamot IV, 13; Sh.A. Eben Haezer XV, 26, 27).

Jewish law permits marriage of stepbrothers and sisters, i.e., if they do not have a parent in common (Sh.A. Eben Haezer XV, 11). On the other hand, Jewish law prohibits marriage to a deceased brother's wife (an absolute prohibition if she had children by the brother, and the requirement that she be given Halitsah if she had no children).

In all these cases of discrepancy between Jewish law and state law the practice of Reform rabbis is to follow the stricter law. Where the state prohibits a marriage we cannot officiate at the marriage even though Jewish law would permit the marriage. In fact, these marriages forbidden by the state are to be considered as being prohibited by Jewish law. (Cf.

Introduction to Sh.A. Eben Haezer, edition Vilna, 1896.) As for a marriage permitted by the state (to a deceased brother's wife) but prohibited by Jewish law, we also do not officiate. This seems to be the general sentiment of the Central Conference of American Rabbis (cf. e.g., Vol. XXIV, p. 115 top; also Samuel S. Cohon's paper, C.C.A.R. *Yearbook*, Vol. XXXV, pp. 365 ff; especially Jacob Z. Lauterbach, C.C.A.R. *Yearbook*, Vol. XXXV, p. 373). Kaufmann Kohler in his paper on "The Harmonization of Jewish and Civil Laws of Marriage" (C.C.A.R. *Yearbook*, Vol. XXV, p. 377, #5) recommends that "the list of prohibited marriages should be augmented in the direction of blood relationship and include the marriage of cousins and of the niece in consonance with the laws of a large number of our states."

MIXED MARRIAGE AND INTERMARRIAGE . . . *Reform Judaism disapproves of mixed marriages (i.e., between a Jew and an unconverted Gentile), but intermarriage (i.e., a marriage between a Jew and a convert to Judaism) is of the same status as any other Jewish marriage.*

The attitude of Jewish Law to the non-Jew has been the subject of much misunderstanding, and indeed of wilful misunderstanding in anti-Semitic propaganda. Certain isolated statements have been torn from their context in ancient Jewish literature, dis-

torted in meaning and endlessly repeated as evidence of the supposed contempt or even hatred of non-Jews by Jews. These false charges have been patiently refuted by Jewish scholars (see especially Lauterbach, "Attitude of the Jew toward the Non-Jew," in *Yearbook C.C.A.R.*, Vol. XXXI, pp. 186-233; J. S. Bloch, *Israel and the Nations*; Michael Guttman, *Das Judenthum und seine Umwelt*; Munk, *Nichtjuden im Juedischen Religionsrecht*).

The misunderstanding of the attitude of Jewish law to the non-Jew has created an erroneous idea as to reasons for the opposition of Jewish law to intermarriage between Jew and non-Jew. The Biblical objection to intermarriage was directed against the seven Canaanitish nations. "Neither shalt thou make marriages with them; thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son" (Deuteronomy 7:3, 4). Ezra and Nehemiah extended this prohibition to include *all* the nations of the land: "they . . . entered into an oath . . . that we would not give our daughters unto the people of the land, nor take their daughters for our sons" (Nehemiah 10:30, 31, also 13:23, 25; Ezra 9:1, 2 and 10:10, 11). This was later extended still further and the present law is that no intermarriage is permitted with any unconverted non-Jew. (See Yad, Issure Biah XII, 1: "Not only the seven Palestinian nations, but all nations are included in this prohibition.")

However, if any non-Jew belonging to any nation

or race converts to Judaism, he or she becomes a full Jew in every respect. (Sh.A. Eben Haezer 4 #9 and #10.) The prohibition applies only to *unconverted* Gentiles.

What is the basis for this prohibition? It has nothing to do with the question of race. Even the nations which the Bible specifically forbids are forbidden for ethical reasons, not for reasons of race. As a matter of fact, the Rabbis were fully aware of the fact that all racial strains were so intermingled that it is impossible to distinguish one race from another. Rabbi Akiba said (Tosefta Kiddushin, Chap. V., # 4): that Sennacherib, the king of Assyria, mixed up all the nations, i.e., the great conqueror removed, exiled and broke up the various nations and all the races were mixed. This fact is embodied in the law. See especially Yad, Issure Biah, Chapter XII, #25. "When Sennacherib, the king of Assyria, confused all the nations and mixed them up one with another and exiled them from their place, these Egyptians in the land of Egypt are now other people (than those referred to in the Bible), so with the Edomites in the land of Edom. Since the forbidden nations are now mixed up among all the nations of the world whom we are permitted to marry, so all are permitted . . . to enter the community of Israel at once (i.e., for conversion)." (See also E. Feldman's paper, *C.C.A.R. Yearbook*, Vol. XIX, pp. 271 ff.)

The original prohibition against intermarriage with the seven Canaanitish nations was not racial preju-

dice but the fear that the Jewish partner in the marriage would be led into idolatrous practices. "For he (the Canaanite father-in-law) will turn away thy son from following Me, that they may serve other gods" (Deuteronomy 7:4). The same motivation underlies the extended prohibitions of Ezra and Nehemiah. This fear of idolatry does not apply to modern non-Jews since the war against idolatry which Israel initiated has triumphed among all civilized people. Jewish law does not consider non-Jews as idolators. As far back as Talmudic times it was already understood that Gentiles outside of Palestine (outside of the seven idolatrous Canaanitish nations) should not be looked upon as heathens. "R. Chiya bar Abba said in the name of R. Jochanan that Gentiles outside of Palestine are not idolators. They are merely following the custom of their fathers" (b. Chullin 13b). This same declaration is repeated by later authorities. Rashbam said in the name of Rashi: "Nowadays all this (association with Gentiles) is permitted for they are not idolators." (Tur Yoreh Deah 148. See also Sh.A. Yoreh Deah 148 #12.) The Talmud (b. Bekorot 2b) discusses the prohibition of entering into business partnership with a heathen lest that entail taking an oath in the name of an idol; but Rabbenu Tam (Tosafot, *ad loc.*) permits partnership nowadays, and as to the oath he says: "They swear by their saints but they do not ascribe divinity to them. This is not to be deemed idolatry for they intend their oath to be in the name of Him Who created heaven and earth."

Christians and Mohammedans in general are considered to be "sons of Noah" (cf. end of the Tosafot quoted above); they are obligated to obey the seven moral commandments imposed by God on all the descendants of Noah, i.e., to establish courts of justice, not to worship idols, not to commit murder, etc. (Cf. b. Sanhedrin 56a & b. Cf. Lauterbach "Attitude of Jew, etc.," notes 20-23. Art. "Laws, Noachian," *J. E.* VII, 648 ff.) If they obey them they are counted among "the righteous of the nations." Thus: "Every one who accepts the seven commandments and carefully observes them is counted among the righteous of the nations and has a portion in the world to come." (Yad, Melakim VIII, 11.) Any Gentile who accepts the ethical commandments, i.e., the seven laws of Noah, is generally looked upon in Jewish law as a half-proselyte to Judaism. Lauterbach in the article quoted, p. 200, says: "In fact, such a Gentile, while of course he cannot be regarded as a perfect and formal proselyte to Judaism, is considered by the Jewish religious teachings as being in a sense actually a proselyte. The rabbis have a special name for such a proselyte. They call him 'Ger Toshav.'" See his note 23 where the authorities are quoted.

Since this is the case, namely, that Gentiles nowadays are not looked upon by Jewish law as idolators but indeed as half-proselytes (Gerei Toshav), what is the objection to mixed marriage between Jew and non-Jew? As a matter of fact, one or two of the earliest Reformers declared that nowadays there is no ob-

jection. The rabbinical conference held in Braunschweig, Germany, 1844, declared: "that the intermarriage of Jews and Christians, and, in general, the intermarriage of Jews with adherents of any other of the monotheistic religions, is not forbidden, provided that the parents are permitted by the law of the state to bring up the offspring of such a marriage in the Jewish faith." This attitude was, however, not endorsed by later conferences and very soon the attitude of Reform Judaism clarified and became exactly the same as that of all of Judaism, namely, that while marriage of a Jew and a converted Gentile is considered a perfect Jewish marriage in every respect, marriage between a Jew and an unconverted Gentile cannot be considered Jewish marriage and a rabbi cannot officiate. *C.C.A.R. Yearbook*, Vol. XIX, p. 170. "The Central Conference of American Rabbis declares that mixed marriages (i.e., between Jews and unconverted Gentiles) are contrary to the tradition of the Jewish religion and should, therefore, be discouraged by the American rabbinate." See also the debate, pp. 170-184. The reasons given for the prohibition are varied. One is that Judaism, being the religion of the minority, must guard itself against disintegration. Another is that a marriage in which the parties are of two different religions could very easily become an unhappy marriage. See Mielziner, *Jewish Law of Marriage and Divorce*, pp. 48-54.

If a mixed marriage does take place, i.e., a marriage between a Jew and an unconverted Gentile, what is

the relation of Judaism to it? When Napoleon convened a Jewish Sanhedrin in 1807 and asked them whether Jews may intermarry with Christians, their answer was ambiguous. They said "Marriages between Israelites and Christians contracted according to the laws of the 'Code Civil' are from a civil standpoint binding and valid and although such marriages cannot be invested with religious forms, they shall not entail any disciplinary punishment (anathema)." As Mielziner points out (*Jewish Law of Marriage and Divorce*, p. 47) the last statement was gratuitous since cherem or anathema had long fallen into disuse in France. But the rest of the statement of the Sanhedrin has been described as evasive by many authors. The fact is that the Sanhedrin found it difficult (as it is indeed difficult) to make clear in a brief paragraph the attitude of traditional Judaism to a marriage between a Jew and an unconverted Gentile. The mere statement that in such a mixed marriage "En Kiddushin Tofsin," the marriage is not valid (they quote this principle in their Hebrew paraphrase of the statement), seems to imply more than the sentence really means. Therefore, to mitigate a possible overstressing of the meaning of this rabbinic principle, they prefaced it with the obvious statement that civil marriages are from a civil standpoint binding and valid. Of course, they may have meant that *they* consider civil marriage to be a valid marriage.

The traditional attitude to a mixed marriage must

necessarily be that such a marriage is not Kiddushin, which means it is not sacred marriage according to Jewish law. It is impossible for Judaism to consider such a marriage as Jewish marriage. Such a couple is incapable of contracting Kiddushin. But is their marriage any sort of marriage? Has it any status at all?

The only practical way to judge this question is by considering what status Judaism gives to the offspring of a mixed marriage. Are the children legitimate from the point of view of Judaism? This question is important not only from the point of view of general intergroup relationship (Darke Shalom) but also from the relationship of the child to the Jewish community. Could the child marry a Jew? If he were considered illegitimate (a mamzer) he could not marry into the Jewish community. The law is clear. "A bastard may not enter the congregation of the Lord even unto the tenth generation" (Deuteronomy 23:3). See also Sh.A. Eben Haezer 4 #1: "Bastards are forbidden in an eternal prohibition unto the end of all generations." (Also Yad, Issure Biah XV, 1.) But it must be understood that the Jewish definition of "bastard" is more liberal than that of most legal systems. A child is considered a mamzer if it be born of an incestuous relationship or of adultery (e.g., with a married woman) but a child born out of wedlock is *not* illegitimate. (Sh.A. Eben Haezer 4, 26.) This is the opinion of Simon Hatemani in m. Yebamot IV, 13, and that is the accepted law. (Cf. Yad, Hilkot Issure Biah XV, 1 and Maggid Mishneh.)

A child born of a relationship between a Jewess and a Gentile is specifically described as kosher—legitimate and Jewish. That is to say, this child, being a legitimate Jewish child, can marry any other Jew. (b. Yebamot 45b; Yad, Issure Biah XV, 3; Sh.A. Eben Haezer 4 #19.) The child of a Jewish man and a Gentile woman is likewise legitimate but he is Gentile and if converted may marry any Jew. The general rule is that in such mixed marriages, the child follows the status of the mother. (Yad, Issure Biah XV, 3 & 4, based upon the Kiddushin III, 12, end.) Thus while the marriage cannot be considered by Jewish law to be Kiddushin (i.e., a marriage in the Jewish religious sense), the child of a Jew and a Gentile woman is not illegitimate and may, upon conversion, be a full member of the Jewish community, while the child of a Gentile man and a Jewish woman is a Jew from birth.

The traditional law which governed the Jewish community was not concerned with marriages which were not Jewish marriage (civil marriage is a modern phenomenon) except insofar as the status of the child of a mixed union was concerned, but modern Jewish leaders, particularly Reform Jewish leaders, being confronted with the modern institution of civil marriage, are willing to take an attitude on these marriages even when there are no children whose status needs to be defined. Dr. Ephraim Feldman in his paper, p. 297, correctly says: "The most strenuous opponents of intermarriage do not think for a moment of de-

nying validity to a nuptial union between Jew and Christian. The most that they do is to ask to be excused from officiating at a function which they disapprove of." Kohler in his paper on "The Harmonization of Jewish and Civil Laws of Marriage and Divorce," *C.C.A.R. Yearbook*, Vol. XXV, p. 374, says: "Ever since the declaration of the Napoleonic Sanhedrin, the civil marriage is recognized by the authorities of Judaism as perfectly and absolutely valid even when it lacks the consecration of the Jewish religion by its special rite of solemnization." This is also substantially the attitude of Orthodox law. The very question was asked of the great Orthodox authority, the late Jehuda Leib Zirelsohn. (See his Responsa "Ma'arke Leb" #87.) He was asked whether civil marriage is considered valid enough to require a Jewish divorce in case the couple desires to be divorced, and he answers in the affirmative.

Zirelsohn's responsum dealt with a civil marriage between a Jew and a Jewess. With regard to a civil marriage between a Jew and a Gentile, David Hoffmann ("Melamed L'ho-il," Volume III, #10) cites a number of authorities which incline him to the decision that if the wife comes to be converted, she may be accepted, that the couple should not be parted but remarried according to Jewish law.

Thus while the traditional Jewish law could not recognize mixed marriage, it did not doubt the legitimacy of the offspring. Modern Reform Judaism likewise opposes mixed marriage, but having to deal with

modern civil marriage, recognizes the full civil validity of such marriages. Both traditional and Reform Judaism consider the marriage between a Jew and a convert to Judaism as full Jewish marriage (Kiddushin).

CONVERSION . . . *Those who present themselves to be received as proselytes are instructed in the doctrines and observances of Judaism. When the candidate is deemed to have received adequate instruction, he or she is accepted into Judaism in the presence of three men, if possible three rabbis.*

Almost all the candidates for conversion who come to a rabbi nowadays are those who are engaged to a Jew and therefore consider their conversion as a preliminary to their marriage. The Talmud (j. Kiddushin to 4, 1; 65b) counts such candidates, among others, such as the proselytes in the time of Esther and Mordecai, converts out of fear (cf. II Kings 17:24 ff) as unacceptable. But Rab says that they must be received in friendliness, for it may be that they are converting out of sincere love of God.

A court of three is required for the reception of proselytes (b. Yebamot 46b; Sh.A. Yoreh Deah 268 #3). The Talmud (b. Yebamot 47a & b) tells that we must make it absolutely clear to the proselyte that his becoming a Jew would unite him to a community which is persecuted and that furthermore he will be

obligated to observe many ritual laws from which he is free as a Gentile. Then he is circumcised. When he is healed he is given the ritual bath. When he comes up from the ritual bath he is an Israelite in every respect. A woman proselyte is given the ritual bath and is also given instruction in some of the commandments.

The Boraita in b. Kirisos 9a compares the admission of the proselyte into Judaism with Israel's own entrance into the Covenant of God. Just as Israel entered by circumcision (in Egypt), the ritual bath (at Sinai) and the bringing of sacrifices (Exodus 24:5), so does the entrance of the proselyte into Judaism require circumcision, the ritual bath and the bringing of a sacrifice. This remains the law. (Yad, Issure Biah XV.) Maimonides adds the following (*ibid.*, XV, 5): "In these days when sacrifices cannot be offered, only circumcision and the ritual bath are required, but when the Temple will be rebuilt the proselyte will bring a sacrifice."

The Central Conference of American Rabbis at the New York Conference in 1892 abolished the requirement of circumcision of proselytes. In fact, both of the ritual requirements, circumcision and the ritual baptism, are not generally insisted upon by Reform rabbis; but the moral requirements are observed: the candidate is carefully examined as to his or her sincerity; full instruction is given in the principles and practices of Judaism; and the proselyte accepted in the presence of three men—if possible three rabbis.

FORBIDDEN DATES FOR MARRIAGE . . . *Weddings are not conducted on the Sabbath or on the main days of holidays.*

Marriages are not permitted on the Sabbath and on holidays. (Yad, Ishus 10, 4; Sh.A. Orah Hayyim 339 #4 and 524 #1.) Moses Isserles in his note to Orah Hayyim 339 #4 says: some permit a marriage on Sabbath in certain cases but that this is not the law. Nevertheless, he continues, we rely upon that permission in case of emergency. This surprising note of Isserles becomes clearer if read in connection with his Responsum #125 (marked #124 in the index of the Sedilkow Edition, 1835) where he makes a powerful defense of his own action in officiating at the marriage in an emergency case of an orphan girl when disputes as to the dowry delayed the wedding till it was quite dark on Friday night. He ends his responsum with the statement that one should however make every effort to make it unnecessary to officiate so late. He gives a similar caution in his note on the Shulhan Aruk quoted above.

In addition to the prohibition of marriage on holidays, the law prohibits marriages on the half-holidays of Passover and Sukkot (Hol Hamo-ed) m. Mo-ed Katan I, 7; Sh. A. Eben Haezer 64, 6). The Talmud (b. Mo-ed Katan 8b) explains this prohibition by the principle that we should not confuse one joy (that of the holiday) with another (that of the marriage). This rule however is not applied too strictly, since it is

permitted to marry on the day before a holiday even though the joy of the seven days of the marriage feast would "be mixed" or confused with the joy of the holiday. This apparent inconsistency is explained by saying that the main joy of the wedding festivities is on the first day (cf. *Magen Abraham* to Orah Hayyim 546 #4). Moreover, it is permitted to celebrate Erusin (the betrothal), which nowadays is part of the marriage ceremony on Hol Hamo-ed. The Erusin may be celebrated with all customary feasting. Moreover, a man may remarry his divorced wife on Hol Hamo-ed. (Sh.A. Orah Hayyim 546.)

In Reform congregations, where Hol Hamo-ed is not marked by any especial observances or laws, marriages are often performed.

In addition to Sabbath and holidays, marriages are forbidden from the first day of Ab to the ninth of Ab. (Sh.A. Orah Hayyim 551 #2.) This is based upon the statement in the Mishnah (m. Ta-anit IV, 6): "When the month of Ab begins we diminish joy." It is permitted, however, to have the betrothal (Erusin) even on the ninth of Ab. Isserles in his note to Orah Hayyim 551 #2 says that "it is our custom not to have marriages from the seventeenth of Tammuz (when according to m. Ta-anit VI, 6, the Tablets were broken and the wall of Jerusalem breached) until the ninth of Ab." Marcus Horovitz (1844-1910), the Orthodox Rabbi of Frankfurt a/M in his *Responsa Matteh Levi* II #32 advocates the prohibition of marriages on all public fast-days. As opposed

to his opinion, he quotes *Magen Abraham* (Abraham Abele Gombiner, seventeenth century) to Orah Hayyim 559 note 11, who says that a bridegroom shall not complete his fast on the public fast-day, which indicates that this was his marriage day. (See also Menachem Mendel Auerbach, seventeenth century, *Ateret Zekenim*, *ad loc.*, who says specifically "he who marries on a public fast-day shall complete his fast.") But Horovitz insists that although it is a fact that marriages did take place on public fast-days in the past centuries, we cannot compare our times with theirs. In those days everybody fasted, but in our time the fasts are neglected and therefore we must be stricter than they were in the past and should forbid marriages on fast-days.

In this responsum Horovitz makes angry reference to the fact that Abraham Geiger officiated at marriages on public fast-days but he adds that we cannot derive any proof from Geiger "or from those who follow him." Reform congregations who *do* follow Geiger, the great pioneer of Reform Judaism, will occasionally have weddings on public fast-days and for this there is considerable rabbinic precedent from past centuries, as indicated above.

Marriages are permitted on Purim (Sh.A. Orah Hayyim 696 #8; also N'har Mizraim *Hilkot Purim* #8); also on Hanukah (Orah Hayyim 573 #1 note of Isserles). Some pious people believe that there is a prohibition against marriage in the ten days of Penitence. There is no justification for this belief (cf.

Hoffmann, Melamed L'ho-il E. H. #1). Jacob Z. Lauterbach (C.C.A.R. *Yearbook*, Vol. XXXII, p. 41) says:

Is there any Jewish law or custom which would prohibit the celebration of marriages during the days between New Year's day and Day of Atonement?

There is no Jewish law to this effect, neither can any reference to such a custom be found in the Shulhan Aruk or in any of the older rabbinic authorities. The first one, to my knowledge, who mentions such a custom is Rabbi Ephraim Zalman Margolioth (1762-1828) in his work *Matteh Ephraim* 602, 5. But this custom was not widespread and is not generally accepted. Even Rabbi Margolioth himself declares it permissible to celebrate marriages during these penitential days, if for some reason or other no other date for the wedding could conveniently be fixed by the parties contracting the marriage. Comp. also Sede Hemed II Ma-areket Hatan Ve-Kallah No. 23.

Marriages are forbidden on certain days during the interval between Passover and Shabuot (the Omer period). There is, however, considerable disagreement as to which and how many days in this period should be prohibited for marriage. Joseph Karo (Sh.A. Orah Hayyim 493 #1) says: "It is the custom not to marry during the period till the thirty-third day of the Omer (Lag Ba'omer) but if one does marry, he is not punished." Isserles adds that after Lag Ba'omer, marriages are permitted. Abraham Abele Gombiner (*Magen Abraham*) prohibits marriage even after Lag Ba'omer but permits marriages

in the first days of the Omer until the New Moon of Iyyar. All agree that if the New Moon of Iyyar comes on the Sabbath, marriages are then permitted. The reason given for the custom to avoid marriages during the Omer period is that during that period, according to the Talmud (b. Yebamot 62b) many of Rabbi Akiba's pupils died of the plague. The plague ceased on the thirty-third day of the Omer.

The Mishnah selects certain days of the week as appropriate for marriage; m. Ketubot I, 1: "A virgin is married on Wednesday and a widow on Thursday." Later law (Yad, Ishus 10 #14; Sh.A. Eben Haezer 64 #3) also prohibits marriages on Friday or Saturday, "lest he come to profane the Sabbath in the preparation of the wedding feast." But Joseph Karo adds: "Some permit this; and so the custom has spread to have marriages on Friday." Don Vidal of Tolosa (end of fourteenth century) in his commentary on the "Yad," "Maggid Mishneh": "in our country they are accustomed to marry on Friday and I do not know what is their basis for this custom." (See however Tosafot to b. Ketubot 3a, s.v., "I Ika" where a reason is given for marriages on Friday.) These preferred or prohibited days of the week (except of course the Sabbath) are no longer so regarded even by the Orthodox.

Isserles in his note to Eben Haezer 64 #3 adds: And it is the custom to marry only in the first part of the month when the moon is still in its fullness (i.e., waxing). This statement of Isserles is repeated

in the Sh.A. Yoreh Deah #179 #2 in the section which deals with magic and superstition. Bahya b. Asher (Spain, early fourteenth century) in *Kad Hakemah* subject "Mezuzah" (ed. Warsaw, 1870, p. 50a) considers all such ideas as mere superstition. However, Nachmanides (Ramban) (responsa of Rashbo ascribed to Ramban #283), discussing magic and witchcraft, does not object to this "custom." Israel Abrahams in *Jewish Life in the Middle Ages*, ed. 1932, p. 201, says:

Of similarly non-Jewish origin was a widespread medieval dread of marrying except at the new or full moon. Both these superstitions can be paralleled in ancient Indo-Germanic rites, and at the beginning of the eleventh century Bishop Burchard of Worms castigates those who would neither begin to build a house nor marry except at the new moon. Jews, however, shared this old objection to the full. In Spain the Jews copied the Greek custom of marrying only on the new moon. Elsewhere, many Jews preferred to inaugurate a new enterprise, or to begin a new book on the new moon. In fact, the Middle Ages encouraged a free trade in superstitions, and Jews and Christians borrowed terrors from one another with the utmost enthusiasm. In Germany, Spain, France and Italy the same phenomena of imitation present themselves.

DOUBLE WEDDINGS . . . *The rabbi will officiate at double weddings in the same family, as for example, a double wedding for two sisters or for two brothers.*

There is some objection in Orthodox law against a double wedding for two sisters or for two brothers; but there is no objection to a double wedding when none of the four to be united in marriage in the respective ceremonies are closely related to each other.

The objection to a double marriage for two sisters or two brothers is derived from a principle cited to explain an entirely different prohibition. The Mishnah (m. Mo-ed Katan I, 8) forbids marriages on Hol Hamo-ed. The Babylonian Talmud (b. Mo-ed Katan 8b) gives various reasons for this prohibition, one of which is that "En me-arebin simhah besimhah"; we may not combine (or confuse) one joy with another. The Palestinian Talmud to the same Mishnah gives the same reason and adds also the fact that Laban told Jacob (Genesis 29:27) (after Jacob had married Leah and asked for Rachel): "Fulfil the week of this one and we will give thee the other also." But in this citation of Laban's statement to Jacob, the Palestinian Talmud permits the implication that the principle not to confuse one joy with another applies not only to a confusion of the joy of the holiday with the joy of a marriage, but also to a confusion of the joy of one marriage with the joy of another.

Isaac b. Joseph of Corbeil (thirteenth century) in his compendium Semak is quoted by David b. Samuel Halevi (sixteenth century), in *Magen David* to the Sh.A. Orah Hayyim 546, 1, to the effect that for this reason (not to confuse one joy with another) we do not have two weddings on the same day; but he is

careful to explain that this applies only to marriages of two brothers or two sisters, for these are two joys that might confuse each other. There is no objection to the double marriage of two sets of strangers. He tells that his teacher (and father-in-law) R. Jeziel would often marry off an orphan at the same time as he would marry one of his children.

However, although this prohibition is mentioned by the authorities quoted above (and is repeated in the *Kitsur Shulhan Aruk* #145, 26) it is not mentioned by Joseph Karo in the *Shulhan Aruk* (though Isserles refers to it in his note to *Eben Haezer* 62 #2) nor in the *Tur* and the *Beth Joseph* nor in *Maimonides* when these authorities deal with the prohibition of marriage on *Hol Hamo-ed*.

This objection to the marriage of two close relatives in a double wedding was popularized most likely by the *Testament of Judah He-hasid* (end of 13th century). This *Testament* or *Ethical Will* was translated into Judeo-German and circulated in numerous editions. Item #31 warns that "one shall not have the weddings of two of his children at the same time, for they will not prosper." This "Will of Judah He-hasid" is described by Israel Abrahams (*J.Q.R.*, Old Series, III, p. 472) as spurious and containing a mass of superstition and as being in many cases directly in conflict with the *Talmud*. The prohibition against double weddings mentioned in this anonymous work is in line with many of its other rules such as, to slaughter any hen that crows like a rooster, or never

to accept a gift from the dead during a dream. See also David Hoffmann, *Melamed L'ho-il* E. H. #19.

MARRIAGE OF MOURNERS . . . *Marriages are not generally held during the first month of mourning but exceptions are made due to special circumstances.*

The law (b. Mo-ed Katan 23a) gives the general rule that marriage may not take place during the first thirty days of mourning. (However, with regard to a marriage ceremony prepared for before the death occurred, see pp. 181 f.) After the thirty days (Sheloshim) have passed, marriages may take place even with feasting (Sh.A. Yoreh Deah #392, 1). The Boraita in Mo-ed Katan, after stating the general prohibition of marriage during the thirty days of mourning, immediately cites the exception in the case of a man who is in mourning for his wife. The rule with regard to the remarriage of a widower is in general stricter, but under special circumstances, more lenient. In general, a man in mourning for his wife may not remarry till three festivals have passed. Asher ben Jehiel (thirteenth-fourteenth century) *ad loc.*, discusses various opinions as to what is specifically meant by the three festivals which the widower must allow to pass before he remarries. He cites one opinion ("Some wish to say") that if his wife died before the New Year, he may marry again after Sukkot, on the assumption that the New Year and the Day of Atonement are

counted as festivals in this regard and that therefore after Sukkot three festivals will have passed. However, R. Asher makes it clear that this is not the fact. The purpose of the law is to allow a long period to pass so that the widower's mind shall not be filled with the thoughts of his recently deceased wife when he marries the new wife. The three festivals mean the three pilgrimage festivals, Passover, Shabuot and Sukkot.

With regard to these three festivals, R. Judah in the Boraita (b. Mo-ed Katan 23a) says that remarriage is forbidden before two of the festivals pass, but is permitted before the third passes. Rabbenu Asher cites R. Isaac Ibn Gayyat (eleventh century) who decides according to R. Judah. He himself (in spite of the contrary opinion of Maimonides, *Hilkot Abel VI*, 5) agrees with this lenient opinion on the general principle that the law is always according to him who is lenient with regard to laws of mourning (b. Mo-ed Katan 20a). The Sh.A. Yoreh Deah #392, 2, gives the rule simply as Three Festivals. Ezekiel Landau (*Dagul Me-revavah*, *ad loc.*) says that Shemini Atseret is counted as a separate festival in this regard. There is a full discussion of the whole question in the responsum of Moses Sofer to a question from his father-in-law, Akiba Eger (Chatam Sofer #290) in the case of a man whose wife died Hol Hamo-ed Pesah and the year is a leap year. Thus twelve months pass without the three full festivals having passed. (Only Shabuot and Sukkot had passed.)

Moses Sofer considers the possibility of counting the New Year and the Day of Atonement and even Purim as a festival and therefore agrees with Akiba Eger to permit the man to marry without waiting till after the next Passover.

There are a number of exceptions to the rule requiring a widower to wait for the passing of three festivals. The Boraita in b. Mo-ed Katan 23a mentions two exceptions, namely, if he has no children or if his children are young and need a mother's care he may remarry at once. The Jerushalmi (Yebamot IV, ed. Krotoschin 6b) adds that if he has no one to wait on him he may also remarry at once. The term "at once" is taken to mean after the seven days of mourning (cf. Sh.A. Yoreh Deah 392 #2). Isserles in his note (*ad loc.*) says that not only a man who is mourning for his wife, but also a man mourning for other relatives, even his father or mother, may marry at once if he has no children (of course, except in the case of his marriage, a man mourning for his parent cannot participate in any feasting for twelve months). Isserles adds: thus the custom has spread that many decide the law leniently and marry within the period of the three festivals.

Just as there are these special laws with regard to a widower, so there are special regulations with regard to the remarriage of a widow. A widow may not remarry till three months have passed since the death of her husband. The reason for the law is that there should be no doubt as to the paternity of a child born

of the second marriage. If, for example, she were permitted to be married only two months after her first husband died, it would be impossible to determine whether a child born seven months after her second marriage was a seven-month child of her second husband, or a nine-month child of her first husband. (m. Yebamot IV, 10; b. Yebamot 42a; Sh.A. Eben Haezer 13 #1.) The same rule, i.e., to make sure of the paternity of the child (Havhono) applies to a woman who has been divorced. She, too, may not be remarried till after three months have passed (*ibid.*) except in the case of a man remarrying his divorced wife; in that case there need be no period of waiting (Sh.A. Eben Haezer 13 #4). A pregnant woman or a woman with a suckling child may not remarry till the child is twenty-four months old. (b. Yebamot 42a, Sh.A. Eben Haezer 13 #12.)

VISIT TO RABBI AND SYNAGOGUE . . . *It is customary for the bridegroom or for the engaged couple to call upon the rabbi a week or so before the marriage is to take place.*

The purpose of this custom is first of all, the practical one of making arrangements for the wedding, but also, and perhaps more importantly, to emphasize the close bond that should exist between the synagogue and each new family that is established in Israel. This bond between the synagogue and the married

couple was constantly emphasized in the past, first by the very fact that weddings were generally held on the premises of the synagogue (see page 84) and also by the custom that the bridegroom would come to the synagogue the Sabbath before his marriage (and often also the Sabbath after his marriage) and be called up to the Torah. This custom has quite an early origin, and is analogous to the custom of the mourners coming to the synagogue on the Sabbath of their week of mourning. *Pirke d'Rabbi Eliezer* dates this custom of the bridegroom (and mourners) coming to the synagogue back to the time of Solomon's Temple:

Solomon saw that the observance of lovingkindness was great before the Holy One, blessed be He. When he built the Temple he erected two gates, one for the bridegrooms and the other for the mourners and the excommunicated. On Sabbaths the Israelites went and sat between those two gates; and they knew that anyone who entered through the gate of the bridegrooms was a bridegroom, and they said to him, May He who dwells in this house cause thee to rejoice with sons and daughters. If one entered through the gate of the mourners with his upper lip covered, then they knew that he was a mourner, and they would say to him, May He who dwells in this house comfort thee. If one entered through the gate of the mourners without having his upper lip covered, then they knew that he was excommunicated, and they would say to him, May He who dwells in this house put into thy heart (the desire) to listen to the words of thy

associates, and May He put into the hearts of thy associates that they may draw thee near (to themselves) so that all Israel may discharge their duty by rendering the service of lovingkindness.

When the Temple was destroyed, the sages instituted (the rule) that the bridegrooms and mourners should go to the synagogues and to the houses of study. The men of the place see the bridegroom and rejoice with him. (Pirke d'Rabbi Eliezer, end of Chapter VII, ed. Friedlander, p. 122.)

See also Soferim, edition Mueller, Chapter XIX, 12.

HOME OR TEMPLE OR HALL . . . *The wedding ceremony takes place in the temple chapel, or the rabbi's study, or in the home of the bride, or in a hotel or social club.*

In Mishnaic and Talmudic times, when marriage consisted of the two ceremonies, Erusin and Nissu-in a year apart, the marriage ceremony was held in two places. The Erusin took place in the home of the bride and the Nissu-in in the home of the groom. (b. Ketubot 7b.) (Also b. Megillah 5b: "He who builds a wedding house [i.e., with a Huppah] for his son.") In the Middle Ages, when both parts of the marriage ritual were united into the present ceremony, and when Jews lived in small compact communities, the ceremony took place on the premises of the synagogue which was, of course, the "Community Center." In Sefer Mahaṙil (Hilkot Nissu-in; Jacob Moellin, May-

ence, fourteenth century) the wedding is described as taking place on the Migdal (the Bimah) of the synagogue. For the marriage of a widower or a widow the wedding took place in the courtyard near the door of the synagogue. Moses Isserles in his note to Sh.A. Eben Haezer 61 #1 says: "Some say that the Huppah should be set up in the open air (under the sky) as a good omen that their children shall be as the stars of the heaven." It was, indeed, a prevalent custom in Europe to have the wedding in the open air in the courtyard of the synagogue. (See Responsa Atse Halebanon, Jehuda Leib Zirelsohn #95.)

Nowadays the wedding is sometimes, though rarely, held in the open air on the lawn of a country home. But generally it takes place in a hotel, a club, at the home of the bride, in the rabbi's study, or in a chapel in the synagogue.

PROCESSION . . . There is no fixed order of procession in simple weddings. The rabbi simply invites the couple to stand before the table on which is the cup of wine and often also two lighted candles. In more elaborate weddings the bridegroom is led before the rabbi by his groomsman and there he awaits the bride who is led by her father.

The modern wedding procession resembles, essentially, the traditional Orthodox procession. The groom is brought to the Huppah led by his groomsman

(Shushbin). In Judea in Tannaitic times they appointed two Shushbinim, one for the groom and one for the bride (Tosefta Ketubot I, 4). In later times it was the custom to have two men to lead the bridegroom. (See Isserles in his note to Sh.A. Yoreh Deah 391 #3.)

The reason given for the bridegroom coming first to the Huppah where he waits to welcome the bride, is that when Israel entered the covenant—its spiritual marriage—with God, God Himself came first to Mt. Sinai and there awaited and greeted Israel. Thus, the Mekilta to Exodus 19:17: "And Moses brought forth the people out of the camp to meet God" says: "God came from Sinai to welcome Israel, as a bridegroom steps forth to meet the bride."

The older custom was to lead the groom and bride to the Huppah with lighted candles (Maharil Hilcot Nissu-in). The bride is led around the Huppah three times. A number of reasons are given for this custom. One is that in Hosea II the phrase: "I betroth thee unto Me," is used three times; another is that there were three modes of marriage: by gift of money, by a bill of marriage and by connubial relations. (Cf. Minhage Yeshurun, ed. Lemberg, 1930, p. 35.)

The bride was placed at the right hand of the groom, as in Psalm 45:10: "At thy right hand doth stand the queen." Incidentally, the last letters of each of the three Hebrew words in this phrase, when read backwards, spell the word "Kallah," "bride." (Cf. Minhage Yeshurun, p. 31.)

MINYAN AND WITNESSES . . . *There is no fixed minimum of people needed to be present for a wedding.*

The Orthodox law requires ten people for the marriage blessings. (Sh.A. Eben Haezer 34 #4, 62 #4.) The requirement is based upon the Talmudic understanding of the verse in Ruth 4:2: "And he took ten men of the elders of the city." The Talmud (b. Ketubot 7b) cites this verse as proof that the marriage blessings require the presence of ten people, evidently understanding that Boaz gathered these ten people to have them present at his betrothal to Ruth.

Eight of these ten may be relatives. Two of them may not be relatives for they must be witnesses of the value of the ring at the Kiddushin (i.e., that the ring is worth at least a Perutah). Jacob Moellin (Sefer Maharil, Hilkot Nissu-in) says that two more witnesses are needed as to the Ketubah.

The requiring of two witnesses for the Kiddushin, two for the Ketubah and ten people present for the blessings had significance when the Jewish marriage laws were the sole legal safeguard of the wife, husband or children. Nowadays, however, the situation is quite different. The legal safeguards are derived from the law of the state. No one may be married without a state license and without the restrictions and protection of state law. The religious marriage no longer needs to provide protection for the property or person of the parties or the children. The religious marriage is primarily the spiritual and moral side of

the marriage. Hence in marriages in Reform congregations the various elements in the traditional marriage ceremony which reflect the old civil safeguards are no longer observed, being no longer necessary. Therefore the old carefully worded Ketubah is no longer read. An ethical homily on the mutual duty and responsibility of husband and wife takes its place. Nor is it deemed necessary to have legally qualified witnesses or a quorum. Couples are often married in the rabbi's study with only four or five close friends or relatives present.

HUPPAH . . . At elaborate weddings a bower of leaves and flowers is often used in place of the Huppah; but at small weddings it generally is dispensed with entirely.

The word Huppah in Psalm 19:7 means the room (of the bridegroom). In the Midrash it is used to mean the bridal room (Genesis Rabba IX, 4). The Talmud, b. Sotah 49b, describes the scarlet and gold cloth used to decorate the Huppat Hasanim. When the bride was brought to the Huppah, i.e., to the room where she was alone with her bridegroom, this was considered the completion of the marriage. Yad, Ishus X, 1: "She is forbidden to him until he brings her into his house and is alone with her, and this seclusion is called—bringing into the Huppah." Cf. article on "Huppah" by Beuchler in *Poznanski Fest-*

schrift, pp. 82 ff., in which many proofs are given that Huppah meant a *room*.

Cf. also Tosafot to b. Sukkah 25b s.v., "En.": "It is necessary to define exactly what is meant by 'Huppah.' The place of the actual residence of bride and groom is called 'Huppah' not the temporary place that is provided (for the Nissu-in blessings)." Joseph Karo, Sh.A. Eben Haezer 55 #1, says that she is not fully married to him "until he brings her into his house and is alone with her." This being alone with her is called "bringing into the Huppah." Isserles in his note to this definition of Huppah says: Some say that it does not mean just being alone with her but bringing her into his house for the purpose of marriage; and some say that Huppah means the spreading of a veil over her head when the blessings are recited; and some say Huppah means when the virgin is carried (to the marriage procession) in the litter and the widow when she is secluded (with her new husband) (m. Ketubot II, 1); but nowadays the custom is wide-spread to apply the term Huppah to where they spread a cloth over staves and bring bride and groom under it in public and he pronounces there the formula of marriage, and they recite the blessings of Erusin and Nissu-in, they lead them to his house and they eat together in a secluded place and that is what, according to the present custom, is meant by "Huppah."

What we today call the Huppah, namely, a cloth held (by four staves) over the bride and groom, may

be derived (as is indicated in the second opinion cited by Isserles) from the medieval custom of covering bride and groom with a Tallit, or the groom covering the bride with his Tallit. (Abraham b. Nathan of Lunel, twelfth century in *Hamanhig*, ed. Berlin, 1855, pp. 91b-92a.) "The Huppah is so called because he (the groom) covers her (hofeh osoh) with his Tallit as the Talmud (b. Kiddushin 18b) says: "He has spread his Tallit over her." He continues: "I saw in France that when they marry they spread one Tallit over bride and groom."

PLAIN RING OR JEWELLED . . . *Any ring is used whether it is plain or is set with stones.*

There is some objection in Orthodox law as to the use of a wedding ring that is set with jewels rather than a plain ring. The first specific mention of this objection seems to be in the statement of Rabbenu Tam (twelfth century) quoted in the Tosafot on b. Kiddushin 9a. The Talmud there discusses the question of determining the value of the object which the man gives the woman as evidence of his wish to marry her (rings were not used till post-Talmudic times). While it is sufficient if the object given is worth merely a "Perutah" (a penny) yet if the man specifically says that it is worth a much larger sum (e.g., fifty "zuz," i.e., fifty silver coins), does the object need to be evaluated to see whether it is worth

what he claims it to be worth? Among other decisions, the Talmud there concludes that silk articles do not need to be evaluated. To this Rabbenu Tam makes the following comment: Silk garments given as a mark of marriage do not need to be evaluated because their value is fairly well known to the average person, but precious stones are hard to value and it is often difficult to distinguish between a valuable and valueless stone, hence (to avoid possible deception as to the value of the stone) it is the custom to use wedding rings which have no stones (i.e., either genuine or false) in them.

Asher b. Jehiel (thirteenth-fourteenth century) doubts the justification of this custom. He says (*ad loc.*): "It is not clear to me why people remove the stones from rings used at weddings." The reason that he gives for doubting the necessity for the custom of avoiding stones in wedding rings is that the difficulty in estimating the value of the stone would come up only in case the man claimed that it has a certain considerable value. If he makes no such claim, it is not necessary to evaluate it (since it is sufficient if it be worth a Perutah, a penny) and furthermore, it is not the custom for a man to declare the value of the wedding ring. (See the entire discussion as quoted by his son, Jacob b. Asher in *Tur Eben Haezer* #31.) The same attitude is taken by R. Aaron Hakohen of Lunel (early fourteenth century) in his ritual work *Orhos Hayyim*, edition Schlesinger, II, p. 55:

Some say that it is not necessary to remove the stone, and that the marriage is valid provided he says to her, "You are sanctified to me by this silver or this gold," or if he puts the ring on her finger and says, "You are sanctified to me by this ring, etc.," i.e., there is no necessity of avoiding a ring with a setting if he does not say it is valuable.

The Shulhan Aruk (Eben Haezer 31, 2) gives the law as follows: "If he marries her with an object, with regard to the value of which it is easy to err, such as precious stones, it is necessary to make an evaluation. Therefore it is the custom to marry with a ring that has no stones."

Samuel b. David Halevi (seventeenth century, Nachlat Shiv'ah, ed. Warsaw, 1902, p. 82 top) implies that there is no error in the marriage provided that the bride is given to understand that she is married with an object whose value is at least a Perutah (penny) and no declaration of higher value is made.

This custom of avoiding a ring with stones, involved as it is in the question of estimating the value claimed, no longer has meaning in Reform Jewish congregations. We follow the spirit of the opinion of Asher b. Jehiel: "We do not need any evaluation unless the price were mentioned and it is not customary to mention the price of wedding rings."

RING FINGER . . . *The bridegroom places the ring upon the ring finger (the fourth from the thumb) of the left hand.*

Since the use of a ring in the marriage ceremony was not known till post-Talmudic times, there is no discussion in the earlier literature as to which finger shall receive the ring. There is in fact no actual law on this subject at all, although the custom was to place the ring on the forefinger (the one next to the thumb) of the right hand. Samuel b. David Halevi (seventeenth century) in *Nachlat Shiv'ah* #12, ed. Warsaw 1902, p. 75, gives an elaborate explanation of why the ring should be placed on the forefinger of the right hand: The right forefinger is the finger with which one points (the index) as seen for example on the "Yad" which is used as an index in reading the Torah. When the bride has the ring on her right forefinger all are able to see at once that she is married.

The author also quotes an explanation from the work *Yesod Hateshubah*, an explanation which he considers far-fetched, yet which is ingenious and interesting. The explanation is as follows: Psalm 19, which contains the words "And he like a bridegroom," indicates by its word order that the forefinger should be the ring finger. If we count on the fingers (beginning with the thumb) the words of the verses 8-10 (i.e., *Torat adonai, edut adonai*, etc.), we find that the word "God" always comes at the forefinger; then verse 11 "(More) precious (than) gold" brings the word "gold" also to the forefinger. Hence we put the golden ring on the forefinger which is sanctified by the name of God.

KETUBAH . . . *The Reform marriage ceremony omits the reading of the marriage contract (Ketubah) and uses only one cup of wine.*

The present Orthodox ceremony is a composite of what was once two separate ceremonies, Erusin and Nissu-in, originally held a year apart (or if a man marries a woman who had been previously married, the interval was one month). (Cf. m. Ketubot V, 1 and b. Ketubot 57b.) The Erusin (betrothal) was a complete legal marriage except for sexual relationship and could not be ended except through death or divorce. The ceremony of Erusin included the reciting of the blessings over the cup of wine, and while no document was required (Ketubah) yet the husband was permitted to write a Ketubah for the Erusin if he so desired (Sh.A. Eben Haezer 55 #6 and note of Isserles).

The Nissu-in, which occurred a year (or for widows, a month) later, required seven blessings. Both sets of blessings were not only a year apart but were recited in two different places (b. Ketubot 7b). During the Middle Ages (cf. *Encyclopaedia Judaica*, art. "Ehe," Vol. 6, p. 240) the interval between the two ceremonies was abolished and now both sets of blessings are part of the combined ceremony. Mahzor Vitry (compiled by Simha of Vitry, a pupil of Rashi, eleventh century, pp. 586-8) gives a responsum of Rashi on the question of the combining of the two ceremonies. He says: "This custom of combining

Erusin and Nissu-in into one, is due to the fact that people do not desire to provide a separate meal for the Erusin. Thus there are people who have the Erusin and the Nissu-in together and so need to provide only one meal." Rashi seems to refer to this custom as if it were new and not yet wide-spread.

In the Reform marriage ceremony both sets of blessings are combined and only one cup of wine is used.

The Erusin blessings are followed by the formula of betrothal, "Harei at," etc. In the Reform marriage ceremony, and now in many Orthodox and Conservative marriage ceremonies, it is customary, before the marriage formula "Harei at" is recited, to ask the bride and groom whether it is of their own free will that they take each other in marriage. While the putting of this question to bride and groom is not a traditional part of the formal ceremony, it fully expresses the spirit of Jewish marriage. The law is clear that marriage cannot take place except by consent of the parties. (b. Baba Bathra 48b, Yad, Hilcot Ishus IV, 1 and note of Abraham b. David as to consent of the man.)

After the formula "Harei at" there follows the reading of the marriage contracts, the Ketubah. Cf. Sh.A. Eben Haezer 62 #9, note of Isserles: "It is the custom to divide them (the two sets of blessings) by the reading of the Ketubah." The custom of reading this legal document detailing the husband's financial and personal obligations to his wife is based, possibly,

upon the statement of Johanan ben Zaccai (b. Ketubot 66b) that he signed and *read* the Ketubah of the daughter of Nicodemeon ben Gurion, but more probably to give solemn emphasis to the legal obligations which were incumbent upon the husband. Louis M. Epstein, in his "Jewish Marriage Contract," describes this ancient document as follows:

The function of the Ketubah in our day is practically no other than to perpetuate an ancient tradition. Its effectiveness in actual questions of law, even Jewish law, is very slight, since it is stereotyped and reduced to the very minimum of specifications. Every Ketubah is exactly like every other Ketubah. In former days, its effectiveness as a document of rights and guarantees was real.

Maharil (Mayence, fourteenth century) did not have the Ketubah read at the wedding. (Minhage Maharil, p. 64b, bottom.) The reading of the Ketubah is omitted from Reform wedding ceremonies. The obligations of the husband and the rights of the wife which the Ketubah had served so well to preserve are emphasized instead in the ethical homily given by the rabbi at the beginning of the ceremony. After the reading of the Ketubah the officiator recites the Nissu-in blessings over the second cup of wine.

Then the bridegroom breaks a glass. According to the Mahzor Vitry (p. 593 top) it is the glass over which the blessings of Nissu-in were recited which the groom throws against the wall and breaks. Jacob

Moellin (Maharil, early fifteenth century) likewise has the bridegroom throw and break the glass over which the blessings were recited. (Sefer Maharil, ed. Warsaw, 1874, pp. 65b-65a.) In later centuries it was felt to be of ill omen to break the second cup, i.e., the cup of Nissu-in which completed the ceremony of marriage, and therefore they broke the *first* cup, the cup of Erusin. Finally it was felt to be objectionable to break either of the marriage cups and therefore a third cup, not otherwise used in the marriage ceremony, was broken instead.

The ceremony of breaking the glass is generally referred back to the incident recorded in b. Berakot 30b-31a, where we are told that Mar, son of Rabbina, at the wedding feast of his son noticed that the rabbis, his guests, were too hilarious. He therefore took a cup worth four hundred zuz and broke it before them and they at once grew sombre. A similar story is told (*ibid.*) of R. Ashi. In later centuries other explanations were given than the one to subdue excessive hilarity. For example, the author of the Kolbo (fourteenth century) records this custom among those which represent our mourning for the destruction of Jerusalem and speaks of it in his discussion of the laws of the ninth of Ab. Jacob Z. Lauterbach, in his essay on the breaking of the glass (*H.U.C. Annual*, Vol. II, pp. 351 ff.) has gathered all the relevant material on this ceremony and clearly shows it to be of superstitious origin. The breaking of the glass is entirely omitted from Reform marriage ceremonies.

With the breaking of the glass, the wedding ceremony ends except that in the grace after the wedding meal, the seven blessings are recited over two cups of wine.

CIVIL DIVORCE . . . *Reform congregations recognize Civil Divorce as completely dissolving the marriage and permit remarriage of the divorced persons.*

While this statement describes the actual practice in Reform congregations as it has developed during the last fifty years, the principle of the absolute validity of the Civil Divorce has never been formally adopted by the Central Conference of American Rabbis. While no doubt is cast upon the validity of the remarriage of individuals who have only a civil divorce, the whole subject is recognized as both delicate and complicated and one, therefore, which will need further discussion and elucidation.

The Jewish divorce, the Get, never seemed satisfactory to the pioneers of Reform Judaism and is equally unsatisfactory to their successors. In the early Conferences and synods in Germany and America, the problem involved in the Get occupied a great part of the agenda and if the discussion has not been so vehement in recent years, it is only because the civil divorce laws have been generally improved and regularized in most of the states of the Union and the subject is not as urgent as it was. But the

relation of Reform Judaism to Orthodoxy and Conservatism with regard to divorce remains unsettled.

Jewish Orthodoxy understands fully that its rabbinical courts no longer have the power to dissolve a marriage as they did in the earlier centuries. Only the civil courts, which give a license for marriage, have the authority to dissolve marriage. Therefore in America and in other lands where Jewish courts lack authority to dissolve a marriage, the rabbinical court, when it grants a "Get," gives a document (a P'tur) to the parties divorced which reads as follows:

[To the woman] "The woman [Name] has received a Get from her husband [Name] according to the law of our holy Torah, but this divorce is only according to our holy Torah; but she is not permitted to marry another man until she obtain permission from the law of the state, since according to the law of the state this Get has no validity." [To the man] "The man [Name] has divorced his wife [Name] but the divorce, etc." [See *Otsar Dinim u-Minhagim*, art. "Get."]

Then the Get document itself is torn. However, in actual practice, the average Orthodox rabbi does not give a Jewish Get until *after* the civil divorce has been granted. Then the caution in this form of the P'tur is not necessary. It has long been the custom to tear the original Get and to give the woman a brief document (a P'tur) saying that she is now permitted to remarry. (Cf. Ba'er Heteb to Eben Haezer 142 Note and Turei Zahav Note 4.) The purpose of the

procedure is that no one should cast doubt on the validity of the divorce years later (i.e., that it was improperly written, etc.) and thus cast doubt upon the legitimacy of the children born of the new marriage.

Although it is thus fully realized that Jewish law cannot dissolve marriage in modern times, yet the attitude of Orthodox authorities with regard to the Jewish Get is equivalent to the attitude of all religious authorities on religious marriage. No one may be married without a license from the state, and the state also provides means for being married by secular authorities, registry offices in England, Justices of the Peace in America, etc. Yet from the religious point of view, no marriage is complete unless it be solemnized by a religious authority. So it is with divorce. The state makes all the legal provisions for divorce but from the point of view of Orthodox Judaism, the divorce is not complete unless the religious divorce is also provided. This attitude is not exclusively Jewish. The Catholic and Episcopal church, as far as their communicants are concerned, likewise superimpose their own religious concepts of divorce upon that of the state. The church concept of divorce has profoundly affected the civil law of divorce in Europe and in some of the states in the Union (cf. *Encyc. Britannica*, art. "Divorce"). The rabbinic law of divorce has, of course, had no such influence upon civil law.

The analogy that Jewish divorce is an additional

requirement to civil divorce as religious marriage is to civil marriage is not a complete one since the state makes provision for Jewish marriage by authorizing rabbis to solemnize marriage, but takes no cognizance of Jewish divorce by authorizing rabbis to arrange Jewish divorces. Yet the analogy is close enough to have motivated the early Reformers to seek to establish some form of Jewish divorce. They did make some such attempt, but they were evidently not too persistent about it and their plans never were fulfilled.

It is evident from the debates in the various Reform synods and conferences that Reform Judaism from the beginning had a general objection to the Orthodox divorce. This objection has various arguments. The first is that the *Get* contravenes the principle stressed by Reform, of the complete equality in religious status of men and women. The traditional idea of divorce is that the husband could divorce his wife but the wife could not divorce the husband. The basis of the law is the verse in Deuteronomy 24:1:

When a man taketh a wife, and marrieth her, then it cometh to pass, if she find no favor in his eyes, because he hath found some unseemly thing in her, that he writeth her a bill of divorcement, and giveth it in her hand, and send her out of his house.

The implications of this verse constituted the subject of a famous discussion between the school of Shammai and the school of Hillel (m. Gittin IX, 10). The

school of Shammai says that a man may not divorce his wife unless he found her guilty of adultery; and the school of Hillel says, even if she scorch the soup, he may divorce her (i.e., for any cause that he desires). The law is according to the school of Hillel, and Rabbi Akiba, in order to make it absolutely clear, says, even if he found another prettier than she.

This complete dominance of the husband is based upon the theory almost universal in antiquity that the wife is the purchased property of the husband, and, in fact, similar laws of divorce are found among the ancient Arabs and among the ancient Romans (see *Encyc. Judaica* Vol. VI, pp. 259-260, and *Encyc. Britannica*, art. "Divorce").

This supreme right of the husband, so wide-spread in many ancient legal systems, was quickly brought under control by the moral conscience of Judaism. The instituting of the Ketubah, which provided that the wife should receive certain sums of money if divorced, served the purpose of making hasty divorce less likely. Also the gradual development of many formalities with regard to the giving of a divorce made divorce more difficult. The many formalities involved in the giving of the divorce, the examination of witnesses, the careful questioning, the laws safeguarding the appointment of agents to bring the divorce, etc., etc., all these served the same purpose. For all the multifarious details as to the text of the bill of divorce, see particularly *Nachlat Shiv'ah* (Samuel ben David Halevi, seventeenth century, ed.

Warsaw, 1898, pp. 91a ff.). See also Seder Ha Get at the end of Sh.A. Eben Haezer at the end of #154. A greater degree of equality for the wife was already known in Mishnaic times, whereby under certain circumstances the husband was compelled by the court to give the wife a divorce (m. Gittin IX, 8). For circumstances under which the wife could ask the court to force the husband to give her a divorce, see Sh.A. Eben Haezer 154. The greatest step forward of all towards equalizing the right of husband and wife was taken in the tenth and eleventh centuries by Rabbenu Gershom ("The Light of the Exile") who summoned a synod which declared: (a) the prohibition of polygamy, and, (b) the necessity of obtaining the consent of both parties to a divorce. In Sh.A. Eben Haezer 119 #6, Joseph Karo gives the old law, that a husband can divorce his wife without her consent, but Isserles in his note cites the Cherem of Rabbenu Gershom against divorcing a wife without her consent. However, in spite of all these many modifications of the ancient law, the basic principle remained that a husband had the right to divorce his wife whereas the wife, except in special cases of hardship where she could appeal to the court to force her husband to divorce her, had no right to divorce a husband.

In this connection it may also be mentioned that Reform Judaism, which emphasizes the religious equality of men and women, also refuses to regard any difference in the religious status between priests,

Levites and Israelites. Therefore, the special prohibition of the law forbidding a priest to marry a divorced woman likewise seemed contrary to the modern spirit of equality of status.

Besides the inequality of husband and wife with respect to divorce, there is a tragic hardship involved in Jewish law of divorce which the best rabbinic minds have been unable to remove, namely, the case of the Agunah (the woman "chained" to marriage even though her husband has disappeared). Jewish law has no provision as has the secular law in almost every country, for declaring a man presumably dead if he has not been heard of for a certain specified number of years. In Jewish law there must be actual evidence of witnesses who saw him die. This fact, coupled with the fact that only the husband can give a divorce, has resulted in the tragic state of Agunah in which countless women whose husbands have disappeared have no way of being freed from the bonds of matrimony. This unfortunate situation has engaged the keen attention and evoked the warmest sympathy of rabbinic authorities for centuries. They have tried to mitigate the state of the Agunah. They have liberalized the laws of testimony as to the death of the husband. They have made it easier for a man to send a divorce by messenger from a distant land, but none of these have altered the basic fact that since only the husband can divorce the wife, and since the Jewish court has no way of declaring a presumption of death, there is no real solution under

Jewish divorce laws for the unfortunate Agunah.

For these reasons the Reform movement has turned away from the traditional laws on divorce, classifying the divorce laws with all the civil laws governing business relations which were an important part of Jewish law when all of Jewish life, religious and secular, was governed by Jewish law. These civil laws are now under the principle of *dina d'Malchusa dina*, i.e., the law of the land is the law with regard to civil law. Similarly, divorce (so argued the early Reformers) must no longer be considered a religious matter but a civil matter. Besides, it is the true function of the rabbi to solemnize marriage and not to break it. Divorce should also be under the control of civil law and the rabbi have nothing to do with it. This point of view was first put forth by Holdheim in 1843. He says that since divorce is a civil act only, it is to be entirely submitted to the laws of the country and therefore the ritual Get is now superfluous. This point of view met with considerable opposition on the part of other Reform leaders like Dr. Geiger who desired rather that the forms of the rabbinic Get be modified. However, Holdheim's point of view was accepted by the rabbinical conference in Philadelphia, 1869. Einhorn reaffirmed Holdheim's position. He said:

Rabbinic Judaism also, though in various cases considering divorce a religious duty, could not remove the civil character of divorce and introduce a religious form for the act. It prescribes no benediction

for it as it does for marriage. The concluding words of the bill of divorce "according to the laws of Moses and Israel" confer in no wise a religious character upon the act as indeed some authorities maintain that these very words were anciently in use also in other Jewish documents which had no religious character at all . . . when two persons unite in community for life, it is the function of religion to offer consecration . . . but if the holy bonds are severed, religion can only tolerate the act in sorrow and silence.

The Philadelphia Conference finally decided as follows: "the dissolution of marriage is, on Mosaic and rabbinical grounds, a civil act only which never received religious consecration. It is to be recognized, therefore, as an act emanating altogether from the judicial authorities of the state. The so-called ritual Get is in all cases declared null and void." (See entire discussion in Mielziner, *Jewish Law of Marriage and Divorce*, Chapter 16.) The Central Conference of American Rabbis continued along the same line. See the recommendation in the *Yearbook* of the Central Conference of American Rabbis, Vol. XXIII, p. 154.

This declaration, that divorce is a civil matter and therefore the ritual Get is unnecessary and the civil divorce should be deemed fully valid, is quite understandable as a general principle. But there were many complications involved which made it necessary to have more than merely this general declaration. There was first, the consideration that just as the traditional Jewish laws of divorce were unsatisfactory

for modern life, so were many of the civil laws of divorce unsatisfactory. The civil laws of divorce in America, particularly a half century ago, were chaotic, differing widely from state to state and therefore merely to accept civil laws as they were was likewise unsatisfactory. Therefore, from the very beginning, the general principle of accepting civil laws as valid was modified by a plan to have the rabbi or a group of rabbis refuse to remarry a couple civilly divorced until the rabbi study the grounds upon which the divorce was granted. "Judaism recognizes the validity of the divorce then only if the cause assigned is sufficient in conformity with the spirit of the Jewish religion." (The decision of the Philadelphia Conference, 1869; see Mielziner, p. 155.) Kaufmann Kohler, who was asked by the Central Conference of American Rabbis to study the problem of the harmonization of Jewish and civil laws of marriage and divorce, made a similar recommendation. (*Central Conference of American Rabbis Yearbook*, Vol. XXV, pp. 335-378, especially pages 376-378, the recommendations.) He says, page 377 #3: "Inasmuch as the civil courts in many states often grant a divorce in cases where from the religious view of Judaism objections might be raised, a body of three rabbis should attest to the correctness from the Jewish point of view of the findings of the court in matters of divorce, and attach their signature to the bill of divorce issued by the court."

These recommendations were not formally ac-

cepted by the Conference and the whole subject of divorce is still unsettled. The urgency of the subject has been somewhat mitigated by the constant improvement in the divorce laws of the various states. The general principle of the Conference, although not formally adopted, can be described as follows: civil divorce is accepted as of absolute validity and the rabbinic Get deemed no longer necessary. There is, however, a tendency to have the rabbi or a group of rabbis review the civil divorce granted and officiate at the remarriage of only such divorces as are approved. In other words, instead of having a parallel system of divorce law as Orthodoxy has in relation to civil law, the Reform movement prefers to accept every civil divorce which conforms to the point of view of Jewish ethics. This latter test has not yet developed as a practice. In actual practice, the civil law is simply accepted as final.

Another complication inherent in the decision of Reform Judaism to accept civil divorce comes from the relationship of Reform Judaism to Conservative and Orthodox groups. Conservative rabbis generally and Orthodox rabbis always will refuse to marry a couple if one or both of the parties is divorced in the courts but lacks a Get. Often such couples come to the Reform rabbi to be married. Should he, in accordance with the Reform principle of accepting the validity of civil divorce, marry them? This question has not been decided by the Conference but it would seem that consideration for the religious scruples of

Orthodox and Conservative congregations should impel the Reform rabbi to refuse to marry members of other congregations whose rabbi refuses to marry them. If an unaffiliated couple, one of both parties of which had been civilly divorced (without a Get) comes to a Reform rabbi to be married, he must decide according to his own judgment. If they are children of Orthodox parents to whom such a marriage would seem to be no marriage at all, he should in kindness to the parents, and therefore for the happiness of the couple, refuse to marry them. If, however, they have no especial Orthodox affiliations, he can, according to his principle of recognizing the validity of civil divorce, officiate at the marriage.

THE NAMING OF CHILDREN AND CIRCUMCISION

THE NAMING OF A CHILD . . . *A child is generally named after a deceased parent or grandparent or other close relatives. Some name the child for a living parent or grandparent.*

The repeating of family first names, giving a child a name which was already used in past generations, was almost entirely unknown in Biblical times. In the list of the names of the kings of the House of David, no two kings appear with the same name. So in the list of the high priests of the First Temple (Ezra 7:1-5 and I Chronicles 6:35-38, no name appears twice). (Cf. Löw, *Lebensalter*, p. 94.) In post-Biblical times the practice changed and names are frequently found repeated in families. Jacob Z. Lauterbach (in "Naming of Children," *C.C.A.R. Yearbook*, Vol. XLII, p. 322) says: "In post-exilic times, however, especially beginning with the Hellenistic period, we notice a remarkable change in the practice of selecting names for children. In the list of the names of the high priests of the Second Temple, and of the Maccabean rulers and later on in the family of Hillel, as well as of later Talmudic teachers, we find many instances of a grandson having the same name as the grandfather." The custom is definitely referred to in

Genesis Rabba 37, 7: "The ancestors named their children in reference to historical events, we name them for our ancestors."

The habit of avoiding the name of a living relative when naming a child is based not upon law but upon custom. It is a medieval custom which was not strictly adhered to especially among Sephardic Jews. The Talmud mentions cases where a living person's name was used for new-born children, as the two children who were named for Rabbi Nathan Hababli during his lifetime. (Cf. b. Sabbath 134a.) Sefer Hasidim #377 says merely: "There are places where they do not name the child after the names of the living but only after those who are already dead." The editor's note to #377 gives various precedents, Talmudic and later, for naming children after a living parent or grandparent. (Also Lauterbach, *l.c.*, 332-3.)

The habit of Jews to use non-Jewish first names is ancient. (See particularly Zunz, *Namen Der Juden*.) The Talmud accepts that fact and says (b. Gittin 11b): "Divorces which come from overseas and are duly signed by witnesses are valid although the names in it are pagan names because the majority of Israel outside of Palestine have names resembling the pagan names." In recent centuries a large portion of the complex body of Jewish divorce law deals with the problem of correctly transliterating non-Hebrew names in the divorce document.

The name given the child is frequently a modernized form of the original Hebrew name of the parent

or grandparent. Some people observe the custom of recording the original Hebrew name upon which the modernized name is based. This custom is not widely followed among Reform Jews inasmuch as in Reform synagogues people are not called up to the Torah by their Hebrew name.

A girl child is frequently named in the synagogue at the Sabbath Services following the birth of the child. A male child is generally named at the ceremony of circumcision although some name both female and male children in the synagogue on the Sabbath following the birth of the child.

For the naming of a daughter when the father is called to the Torah on the Sabbath succeeding the child's birth, see *Sefer Matamim*, page 47, #8. See the ritual for the naming of a child in the synagogue, *Rabbis Manual*, edited and published by the Central Conference of American Rabbis, Cincinnati, Ohio, 1928, page 12.

CIRCUMCISION . . . *The ancient practice of circumcising a male child at the age of eight days, the first commandment given to Abraham our father (Genesis 17:11), is strictly observed.*

Many parents have a mohel perform the operation although many have a surgeon perform it. Some will permit the surgeon to perform the operation even though he is not a Jew. The child is named in the

ceremony accompanying the circumcision. See *Rabbi's Manual*, pages 8-10. If the operation is performed by a mohel, the mohel pronounces the blessing; if not, the father (or rabbi) pronounces the blessing and names the child.

The circumciser need not necessarily be a mohel, a professional functionary. The commandment of circumcision is incumbent upon every man. Even women are permitted, under special circumstances, to perform the operation. Originally it was not considered a professional task for which a fee was given, but a good deed (a mitsvah) incumbent upon every Israelite of good character who had the skill to perform the operation. Hence a Jewish physician may, of course, perform the circumcision.

While the law is that it must be a Jew who performs the circumcision (b. Abodah Zarah 26a), nevertheless under certain special circumstances a non-Jew may perform it. The Talmud (b. Abodah Zarah 26b) records the opinion of R. Meir who says that in a city where there is no Jewish expert, even a pagan may perform it. (The discussion there concerns the choice between an idolater and a Samaritan; R. Meir preferring the idolater or pagan, others preferring the Samaritan.) Likewise, Moses Isserles (in the Sh.A. Yoreh Deah 264, 1) says that in time of danger a Gentile may circumcise.

When in modern times a Gentile surgeon performs the operation, the father (or rabbi) should recite the blessings and name the child.

BURIAL AND MOURNING

AUTOPSY . . . Reform Judaism has no religious objection to autopsy. Whether an autopsy is to be performed or not is left to the decision of the family.

The question of whether Jewish law permits autopsy has created a great deal of legal discussion and has also had serious political repercussions. Before the war the anti-Semitic movement in Rumania, Austria-Hungary, Poland and in other lands, attempted to bar Jewish students from the study of medicine inasmuch as the Jewish burial societies refused to deliver Jewish bodies to medical schools or hospitals for the purpose of autopsy and dissection.

In general, Jewish law prohibits delay in the burial of a body and also mutilating a body. On either one of these two grounds it is possible to declare autopsy and dissection forbidden by Jewish law. However, as is well known, the Talmud has such knowledge of anatomy as could have been obtained only from the dissection of bodies. (For example, the pupils of Rabbi Ishmael, b. Bekorot 45a, etc.) The two great Orthodox authorities, Ezekiel Landau and Moses Sofer permit autopsy when there is in the same locality a person suffering from the same disease; in other words, when the autopsy would permit the physicians to save a life. In order to save a life, all the laws of the Torah (except idolatry, incest and mur-

der) may be violated. Dr. Lauterbach, in his complete responsum on the matter (*C.C.A.R. Yearbook*, Vol. XXXV, pp. 130-134) quite properly argues that nowadays the discoveries made by one physician are broadcast all over the world and may result in the saving of innumerable lives. Therefore there is no need to insist, as Ezekiel Landau and Moses Sofer insisted, that there should be present an invalid with exactly the same disease whose life depends upon this particular autopsy. The subject is discussed fully in Greenwald's *Och Letsoro*, pp. 27-29. In this discussion it is clear that the present Orthodox authority is absolutely opposed to turning over Jewish bodies for dissection in medical schools since parts of the bodies dissected are carried away by students and, in general, therefore, the body does not receive the respect which it should. This objection, however, against medical school dissection, does not logically apply to an autopsy performed in a hospital, particularly when such autopsy will not unduly delay the burial of a body and can be of direct use in saving the life of a specific patient.

General Reform practice is to base the question of autopsy upon the desire of the family. If the family is willing, there is no objection to it. The beginning of Dr. Lauterbach's responsum expresses our present attitude: "To my knowledge, no law or regulation expressly forbidding the practice of autopsy can be found in the Bible, or the Talmud or the Shulhan Aruk. It may safely be stated that in case the autopsy

would not unduly delay the funeral, one could not find the least support for any objection to it in these authoritative sources of Jewish law."

DATES FORBIDDEN FOR FUNERALS . . . *Funerals are not held on the Sabbath, on the Day of Atonement or on the main days of the festivals.*

Orthodox law, although prohibiting the burial of the dead on the Sabbath and the Day of Atonement (Sh.A. Orah Hayyim 526 #3), permits burial on the main days of the festivals. The Shulhan Aruk (Orah Hayyim 526 #1-4) says that on the first day of a festival the labor involved in burial must be performed by non-Jews, while on the second day of the festival the work may be done by Jews, although the second day is still one of the main days according to Orthodox practice outside of Palestine. The Shulhan Aruk insists that it is not permissible to postpone the burial from the first day to the second day so that Jews may be permitted to perform the labor of the burial. Dr. Gotthard Deutsch, who discusses this matter in the *Yearbook* of the Central Conference of American Rabbis (Vol. XXXI, 53-55), cites a number of cases of Orthodox rabbis who were buried in strictly Orthodox communities on the first day of holidays or on the New Year.

This law, permitting burial on the holidays, is, of course, based upon the law which prohibits keeping

a body overnight. Among Reform Jews, where the practice of burying the body on the same day is not strictly adhered to, bodies are not buried on the first day of holidays. In the year 1922 the Central Conference of American Rabbis (*Yearbook* XXXII, p. 80) adopted the following resolution:

Although in the codes of Jewish law there is no express prohibition of conducting funerals on the festivals, yet in deference to Jewish custom and sentiment, your committee is of the opinion that members of the Central Conference of American Rabbis should abstain from conducting funerals on these days except where public health demands.

KOHANIM AND FUNERALS . . . *Individuals of priestly descent (Kohanim) do not hesitate to attend funerals and go to the graveside with other Israelites.*

The Biblical law (Leviticus 21:2-4) forbids a priest to become defiled through contact with a dead body. The Talmud develops the specific details of the law by forbidding the priest to enter any enclosure (e.g., a house) in which a dead body or part of a body is found. Thus a priest may not enter a cemetery. The Bible, however, makes an exception to this law with regard to the bodies of close relatives, namely: his father, mother, son, daughter, brother and virgin sister. The Talmud adds the wife to this list. (Sifro to Emor 1:1, ed. Weiss, p. 93b.) This law against

contact with the dead applies to males of priestly descent, not to females. For the burial of those relatives for whom he may be defiled, he may enter the cemetery regardless of the fact that thus he would be defiled by the presence of the other bodies buried in the enclosure. Cf. Sh.A. Yoreh Deah 373 #7, the note of Isserles.

Although it is considered doubtful in present times that priests are of pure priestly descent since the old genealogical tables are no longer kept, Orthodox Kohanim still observe the rules of priestly defilement and do not enter cemeteries except for the burial of their close relatives.

Greenwald in *Och Letsoro*, pp. 45-59, goes into a complete discussion of the matter, including such questions: as to whether a priest may travel on a train on which there is a corpse (since the train passes through tunnels and so he is in "a tent" with a corpse), whether a priest may travel in an airplane since he thus travels over graves, and whether a priest may study medicine since that involves dissection of bodies.

IMMEDIATE BURIAL . . . *The Orthodox custom of immediate burial (whenever possible on the day of death) is not strictly adhered to. The body is generally embalmed and kept for a day or two or even more if it is necessary to wait for the arrival from a distant city of a close kin of the departed.*

The general rule in the Talmud and the later codes is that the body should not be kept overnight, that the dead should be buried on the same day as the death took place. This rule was based on practical necessity because of the warm, semitropical country in which the laws developed and because embalming was not practiced. The only Biblical basis for the rule is the law (in Deut. 21:23) that the body of a man executed at the order of the court shall not be allowed to remain unburied overnight. This was taken by the rabbis to be merely an example of the general rule that no body should be allowed to stay overnight. (b. Sanhedrin 46b; Sh.A. Yoreh Deah 357, 1.) There are, however, definite exceptions to the rule. If, for example, it is necessary to wait for the sake of the honor of the dead, that is to say, in order to provide a coffin or burial clothes or that relatives may be given time to arrive, in such cases delay is permitted. Furthermore, the Talmud (b. Mo-ed Katan 22a, and also Sh.A. Yoreh Deah 357, 2) say that while it is praiseworthy to hasten burial for all bodies, it is not praiseworthy to hasten burials for one's parents to whom one has the obligation to provide full mourning.

In 1772 the German city of Mecklenburg prohibited early burial and insisted that three days should intervene between death and interment. This evoked considerable protest on the part of the rabbis but Moses Mendelssohn defended the law and gave evidences from the older literature showing that they

did frequently wait with the burial. The great Orthodox authority of the time, Moses Sofer, said that the delays in the past were to be considered merely as exceptions and that burial should be on the day of death unless the government forbids it. This remains the Orthodox law save for the exceptions mentioned above.

Embalming was not generally practiced in ancient Israel but it was not unknown since it was the usual practice in Egypt. Jacob was embalmed in Egypt, and so also was his son Joseph. Genesis 50:2-3: "And Joseph commanded his servants, the physicians, to embalm his father and the physicians embalmed Israel." 50:25: "So Joseph died being one hundred and ten years old and they embalmed him and he was put in a coffin in Egypt." In the time of the Second Temple the practice was likewise not altogether unknown as we learn from Josephus (*Antiquities*, Book XIV, Chapter 7, 4) where he tells of the embalming of Aristobulus. "His dead body also lay for a good while embalmed in honey till Anthony afterwards sent it to Judea and caused him to be buried in the royal sepulchre."

Some Orthodox authorities object to embalming precisely because it delays the decay of the body. From the Mishnah in Sanhedrin V, 6, where the rule is given that the bones of criminals may be removed from the court cemetery for reburial in their family cemeteries only *after* the flesh has completely disintegrated, they conclude that it was only after the flesh

was gone that the criminal attained his full atonement for his sin. Hence they generalized, that to delay the decay of the flesh also delays the full atonement for sins committed in life. Another objection to embalming is based upon the general prohibition of defacing a dead body. However, Solomon ben Adret (Rashbo; Spain 1235-1310) says in his Responsa #369 that neither the use of quicklime to hasten the decay of the flesh nor embalming constitute a shameful defacing of the body. In other words, he seems to have no objection to the practice of embalming. Also Manasseh Grossberg in his responsa, "Livne Menashe," #2, after giving general objection to embalming, explains that the reasons that Jacob was embalmed were first, that it was the royal command, and, second, that it was in order to transport the body to a distant place, which is permitted. Greenwald in *Och Letsoro*, page 32, after reviewing the various objections to embalming, concludes by quoting one opinion to the effect that embalming is permissible if the method of embalming does not require mutilating the body and if the embalming is done by Jews. In general however embalming is discountenanced by Orthodox law.

JEWISH CEMETERY MAUSOLEUMS . . . *The burial takes place in a Jewish cemetery, generally in a family plot, occasionally in a family mausoleum. In some cities the Jewish cemetery is a separate section of a*

larger general cemetery. Bodies are occasionally disinterred in order to remove them from a single grave to a family plot which is purchased at a later date, or from a smaller family plot to a larger one.

The Shulhan Aruk (Yoreh Deah 362 #1) discusses the question of whether a body may be buried in a coffin since thus it would not be in direct contact with the earth. Ba'er Heteb (*ad loc.*) asks whether or not the bundle of earth put under the head in the coffin does not constitute contact with earth. It is thus evident that to place a body in a mausoleum away from direct contact with the earth does not accord with the spirit of Orthodox law. However, the great Orthodox authority of the past generation, Isaac Elhanan Spec-tor of Kovno, did permit burial in a mausoleum provided the burial there is temporary and the intention is to bury the body in the ground later. (Cf. Eisenstein *Otsar Dinim u-Minhagim*, article "Pinnui Mesim.") The present custom of providing family mausoleums for burial accords almost precisely with the wide-spread Biblical and post-Biblical Palestinian custom of burying the dead in niches cut into the walls of a cave. The burial place of Abraham and his family (Makpelah) was a cave (Genesis 23:9). See also Isaiah 22:16:

Thou hewest thee out a sepulchre on high
And gravest a habitation for thyself in the rock.

The Mishnah (Baba Bathra VI, 8) which describes

the arrangements of niches in a tomb, clearly had in mind a rock or cave tomb. The cave tombs were much like mausoleums. They had a stone (i.e., door) which was movable and a "porch" large enough for the coffin before burial and for those who visited the grave. (See Kohler in *Jewish Encyclopedia*, article "Burial," Vol. III, p. 436.) Those rocks or cave tombs naturally developed into stone burial buildings, i.e., mausoleums. However, the "Nefesh," the stone house built over a grave was not a mausoleum. (m. Erubin V, 1; Shekalim II, 5.) The body was buried in the ground itself and the "Nefesh" was built above it. Yet there were artificially built Jewish mausoleums, as, for example, in Phrygia. Safanov in *Universal Jewish Encyclopedia*, Vol. III, p. 75, says: "However, the idea of caves survived in the use of mausoleums and family vaults. Thus while a new mode of burial (i.e., in a communal earth cemetery) was adopted in the dispersion, the Jewish tombs in Phrygia in the second and third centuries C.E. were erected above the ground." The Talmud (b. Sanhedrin 47b) speaks of a "built grave" (Kever Binyan) which Rashi explains as a sepulchre built above ground. For further archeological discussion of mausoleums, see *Encyclopaedia Judaica*, Vol. VII, pp. 606-7; also *Jewish Encyclopedia*, Vol. XII, pp. 185-6, article "Tomb."

In Biblical times burial took place almost entirely in family sepulchres rather than in individual graves. (Cf. Kohler, *Jewish Encyclopedia*, Vol. III, p. 638,

article "Cemetery"; and Gustav Cohn in *Encyclopaedia Judaica*, article "Grab," Vol. VII, p. 610.) Thus Abraham acquired a sepulchre in which first his wife, Sarah, and later the other members of his family were buried (Genesis 23; 25:9; 49:31; 50:13). The kings of Judah and Israel were buried in family sepulchres (II Kings 15:7). So universal was the custom of burial in family sepulchres that the popular expression for death was "to be gathered to one's fathers" (Judges 2:10).

The Mishnah (Baba Bathra VI, 8) speaks of a man selling a sepulchre to another and providing it with eight niches. (Cf. commentary of Yom Tov Lippman Heller: "It was not their custom to bury each body separately but all the members of a family were buried in one cave each in a separate niche.") In the Middle Ages, owing to lack of space, it was difficult to maintain the older custom of reserving space in a communal cemetery for members of a family and the dead were buried in a row in succession. It is noteworthy, however, that a special space was generally reserved in the communal cemetery as in Nikolsburg in Moravia for the rabbis of the community and the chief rabbis of the province. (Cf. Feuchtwang in *Kaufmann Gedenkbuch*, p. 370. See also *Och Letsoro* 168-171.)

During the last century certain European cities established communal cemeteries in which separate sections were provided for the dead of different faiths. The question arose whether Jewish law permits the

use of part of a general cemetery for the burial of Jews, or must Jews have a completely separate cemetery of their own. This question is discussed by Eliezer Deutsch in his Responsa *Duda-e Hasadeh* (#66 & 89). Both responsa were in answer to questions from the Jewish community of Hermanstadt in 1905 and 1909 where a municipal cemetery was established and the Jews assigned a part of it.

The Talmud in b. Baba Bathra 102a, dealing with the transfer and inheritance of property, refutes an argument made in the discussion by saying: "If that were so then the righteous man (Elazar) would be buried in a grave which is not his." This indicates that each individual should own the grave in which he is buried. Therefore the law requires (Sh.A. Yoreh Deah 362 #3, 4) that there should be a definite amount of space separating one's grave from another. Then the custom grew that the Jewish community (or the burial society) should own the burial ground. The ownership must be, if possible, complete and permanent. See Ezekiel Landau, *Noda Bi-Yehudah*, Responsum #89, Yoreh Deah, where he discusses the allied question as to whether a body may be disinterred from a burial ground which the Jewish community owns only for a term of years in order that it may be reburied in a newer cemetery which the community has bought as a permanent possession.

In the case of a Jewish section in the general non-sectarian cemetery, if the Jewish section is sold to the Jewish community as a permanent possession, the

section may be used as a Jewish burial ground. But there must be a fence and a space marking off the Jewish section from the Gentile section. Eliezer Deutsch (in Responsum 66) is careful to explain that this separation does not imply any deprecation of the Gentiles since their own religious laws do not permit them to be buried in a Jewish cemetery, and besides, even between the grave of a Jew and the grave of another Jew there must be a separating space. See also *Och Letsoro*, p. 129 #2.

SHROUDS . . . *The body is buried in ordinary clothes, rarely in a shroud as was the older custom.*

There is no evidence that in Biblical times the dead were buried in special burial clothes such as shrouds, etc. In all likelihood they were buried in their ordinary garments. According to the account in I Samuel 28, the witch of Endor saw the prophet Samuel arising from the grave clad in a robe (vs. 14: "An old man cometh up and he is covered with a robe"). The Midrash (Leviticus Rabba 26:7) connects this statement with the verse describing Samuel's boyhood (I Samuel 2:10): "his mother made him a little robe and brought it to him from year to year." Thus the Midrash indicates that the prophet Samuel was buried in the same sort of clothes which he wore during life-time.

The original custom of burying the dead in ordi-

nary clothes gradually led to extravagances and financial hardship since people began to vie with each other in providing expensive garments for the dead. Therefore Rabban Gamaliel, in order to set an example of modesty, asked that he himself be buried in simple linen garments. The rest of the people then followed this as a custom and thereafter buried their dead in simple linen garments. (b. Ketubot 8b and Mo-ed Katan 27b.)

The number and type of garments used varies with the various communities (cf. Ma-avor Yabbok, ed. Landshuth #23, p. xxxviii) but the rule is followed that they are loosely sewn and the thread unknotted. Among the garments of the dead is the Sargenes (derived from "serge") or Kittel. This long white surplice is worn during prayer on the Day of Atonement and by the host at the Seder and by the cantor during the Musaf Service on the first day of Passover and the eighth day of Sukkot. In addition, Orthodox custom requires that the prayer-shawl (Tallit) be placed on the head of the body (cf. Sh.A. Yoreh Deah 351 #2 and 352).

PROCESSION . . . *The coffin is brought directly to the grave. Kaddish is always said at the graveside.*

The custom of stopping the funeral procession a number of times in the cemetery on the way to the grave dates back to the time of the Mishnah. Thus (m.

Megillah IV, 3): "We do not pause and stop (the coffin) unless there are ten (people present at the funeral). (See also m. Baba Bathra VI, 7.) Rashi, commenting on b. Megillah 23b (and referring to the Boraita statement in b. Baba Bathra 100b: "We do not make less than seven halts and rests for the dead") says that when they carried the dead to burial they halted seven times to weep for the dead and so that whoever wished to eulogize him could do so. However, Rashbam to the same passage in b. Baba Bathra 100b, says that there were seven halts and rests on the way *back* from the burial, in order to comfort the mourners. Bertinoro, commenting on the Mishnah Megillah IV, 3, speaks of the seven halts on the way to the grave; but commenting on the Mishnah in Baba Bathra VI, 7, he speaks (evidently following Rashbam) of seven halts on the way *from* the burial.

A double custom seems to have grown up: to stop seven times on the way to the grave and also seven times on the way from the grave. (Cf. Ma-avor Yabbok, ed. Landshuth, p. 97 bottom.)

Moses Isserles says (to Sh.A. Yoreh Deah 358 #3) that some say that the procession should be halted every four cubits but that at present the custom is to halt *three* times. This custom was wide-spread in northern Europe. (Cf. Landshuth, ed. of Ma-avor Yabbok, p. 91.)

The purpose of halting on the way to the grave was, as given by Rashi (to Megillah 23b) to allow full opportunity to eulogize the dead. Perhaps also

the custom grew up as an extension of habit of traveling to the cemetery by a long roundabout way so as to lengthen the procession of mourners, thus honoring the dead by the larger size of the procession (just as the funeral of Jacob on the way from Egypt was taken the long way around by Goren Hootod) (cf. Sefer Matamim 16 #30). A number of authorities give a superstitious explanation, namely, to prevent the evil spirits from keeping up with the body and entering the grave (see *Ta-ame Haminhagim*, IV, p. 32; also Ma-avor Yabbok, ed. Landshuth, p. 91).

As for the reason for seven as the number of halts, the Talmud itself says (b. Baba Bathra 100b) that it corresponds to the number of "Vanities" in the Book of Ecclesiastes; implying that those who attend the funeral should realize the vanity of mortal strivings.

Joseph Karo, in the section of the Shulhan Aruk to which Isserles appends his description of the custom, simply makes no mention of it at all although he does make a passing comment to it in his commentary Kesef Mishnah to Maimonides' reference in Hilkot Abel XII, 3.

The custom of halting on the way to the grave (whether seven or three times) is frequently omitted. It is not observed on all those days when *Tahanun* is not said, namely, on the days before holidays, etc., and if the funeral takes place at night or on Friday afternoon or in the afternoon before a festival. (Cf. Higger, *Semachot*, p. 83.)

On returning from the cemetery it is the Orthodox custom to take a route different from the one which was taken on the way to the cemetery. The motive seems to be to avoid or outwit the demons who were believed to hover about the cemetery and who might accompany the mourners to their home. Samuel b. Meir (Rashbam) in his commentary to b. Baba Bathra 100b, cites this as the explanation (which he read but does not approve of) for the custom to halt seven times on the way from the cemetery. In b. Berakot 51a, Joshua b. Levi says that the Angel of Death told him not to be near women when they return from a funeral "because I dance before them with my sword in hand and I have permission to destroy." In answer to the question, what to do to avoid the danger, it is suggested: "If there is another route let him take it." Thus to avoid danger from demons or the destroying angel, the custom arose to take another route on the way home from the cemetery.

After leaving the grave it is the Orthodox custom to pluck up some grass and throw it back over the head. (Sh.A. Yoreh Deah 376 #4.) The reason for the custom is given in Ma-avor Yabbok (in the section Sifte Renanot, Chapter 20, who quotes the Levush [Mordecai ben Abraham Jaffe 1530-1612]) that the mourners may bethink themselves of the day of their death. Hence they recite the verse (Psalm 103:14): "He remembereth that we are dust." The grass is a symbol of the resurrection of the dead, as

in the verse: "May they blossom out of the city like grass of the earth" (Psalm 72: 16). To cast the earth upward over the head is also a mark of mourning, as in Job 2:12: "And they threw dust over their heads toward heaven." After these explanations, the author adds that the throwing of earth and grass toward heaven symbolizes the fact that the dead will ascend in purity above all these material things.

The custom of washing the hands after returning from the cemetery (Sh.A. Yoreh Deah 376 #4) is explained by Jacob Moellin (Teshuvot Maharil #23): "because of the spirit of uncleanness which dwells in the cemetery and the washing of the hands removes it." See also Tur Yoreh Deah 376 where Jacob b. Asher quotes the question asked of Hai Gaon and his answer as follows: "It is our custom on returning from the cemetery to wash the hands before entering the house"; to which he answered: "It is not necessary to wash the hands but if it is the (local) custom to wash the hands, there is no objection to it."

Reform congregations omit these customs altogether.

According to Orthodox custom, Kaddish is not always said at the graveside during the funeral services. The burial Kaddish is connected with the prayer Tsidduk Ha-din. This prayer is not recited on the days when the Tahanun is not said in the synagogue, namely, New Moon, Purim, Hanukah, Friday afternoon, etc. (Cf. Ma-avor Yabbok, ed. Landshuth, p. 91 #4. See also Sh.A. Yoreh Deah 401 #6 espe-

cially the note of Isserles. Also Greenwald *Och Let-soro*, 158-9.)

The custom of Reform congregations is to say Kaddish at every funeral.

For Mourner's Kaddish, see pp. 168-9.

CREMATION . . . *Cremation is occasionally practiced and the ashes buried in the family plot or in a single grave.*

According to Orthodox law, burial is the only proper way of disposing of the dead. It is considered a specific commandment to *bury* the body. Therefore the bulk of Orthodox rabbinic authorities consider cremation contrary to Jewish law. Cremation was not unknown in ancient times and there are a number of references to it in the Bible. The bodies of King Saul and his sons who fell at the battle of Gilboa, were cremated. I Samuel 31:12, 13: "All the valiant men arose and went all night and took the bodies of Saul and the bodies of his sons from the walls of Beth-shan and they came to Jabesh and burned them there." Also in the book of Amos there is a reference to burning of the body; Amos 6:10: "And when a man's uncle shall take him up, even him that burneth him, to bring the bones out of the house," etc. Likewise in Jeremiah 34:4, 5, the promise is made to King Zedekiah as follows: "Thus saith the Lord concerning thee: Thou shalt not die by the sword, thou shalt

die in peace and with the burning of thy fathers, the former kings that were before thee, so shall they make a burning for thee; and they shall lament thee." The first two verses, however, may be looked upon as describing exceptional circumstances. The bodies of Saul and his sons were burned in order to save them from being desecrated by the Philistines. The difficult verse in Amos may refer to a special situation in time of epidemics when bodies had to be burned; while the verse in Jeremiah may refer not to the burning of the bodies of the kings but to the pyre of incense and the king's armor, etc., which were burned at his funeral.

The idea of cremation could not have been entirely abhorrent in earlier times. In the Midrash Vayosha (Jellinek *Bet ha-midrash* Vol. I, page 37), Isaac, being led to the sacrifice at Mount Moriah by his father Abraham, speaks as follows: "I plead with thee, O father, hasten to fulfill the will of thy Master and do not delay; roll up thy garments and gird thy loins and burn me well and take my ashes to Sarah, my mother, that she may place it in an urn in her room and whenever she enters into her room she will remember, weeping, her son Isaac." While the majority of the Orthodox rabbis declare that cremation is contrary to traditional law, there has been a great deal of controversy on the subject and it has become a frequent practice among Liberal Jews.

For a complete halakic discussion of both sides of the question of cremation, see the last essay in

Halakot v'Aggadot by Michael Higger, N. Y., 1933.

The most complete summary of Orthodox objection to cremation has been made by Meyer Lerner, Rabbi of Altona, Germany, in his book *Hayye Olam*, Berlin, 1905. Rabbi Lerner confesses in his Introduction on page ix: "I know that in these enlightened lands, for every rabbi who forbids the burial of ashes in the Jewish cemetery, it is easy to find many rabbis who are lenient in this regard and not only among those teachers who deny the written or the oral Law but also among them who still hold firm to the foundations of our holy Torah, for it is easy to say 'It is permitted' to all those things which most of the people desire." It is to combat this leniency even on the part of Orthodox rabbis with regard to cremation that Lerner wrote his book.

FLOWERS . . . *Flowers are placed about the coffin. The grave is beautified with grass, flowers and plants.*

It is contrary to Orthodox custom to cover the coffin with flowers or to plant flowers or shrubs on graves. There is, however, no *law* against it. In ancient times in Palestine they frequently chose burial places under trees. Thus: "And Deborah, Rebekah's nurse, died and she was buried below Beth-el under the oak" (Genesis 35:8); also with regard to the bones of King Saul and his sons: "And they took their bones, and buried them under the tamarisk-tree in Jabesh" (I

Samuel 31:13). King Manasseh was buried "in the garden of his own house, in the garden of Uzza" (II Kings 21:18). So also King Amon was buried "in his sepulchre in the garden of Uzza" (II Kings 21:26). It was also the ancient custom to use incense or perfumed spices at funerals (m. Ber. VIII, 6; b. Berakot 53a).

About the year 1858 some Orthodox members of the congregation in Mainz uprooted some shrubs which had been planted on certain graves in the cemetery. This led to litigation. The Orthodox element in the community based the objection to the plantings on the grave upon the law (Sh.A. Yoreh Deah 364 #1) that the earth which had been excavated for the coffin and then put back on to the grave belongs to the grave and therefore may not be used for the benefit of the living (Asur Behana-ah). However, in Konigsburg, in 1819, permission was given to put turf on the grave for the reason that it protected the sand of the mound from blowing away. (This subject is discussed and the above incidents cited by Leopold Löw, *Gesammelte Schriften*, Vol. III, 439 ff., and by his son Immanuel Löw in *Die Flora der Juden*, Vol. IV, p. 340.)

The flowers or plants on a grave are not necessarily "for the benefit of the living" but rather in reverence of the dead (Kevod Ha-mes). Furthermore, additional earth is always placed on the grave for the planting.

As for flowers on the coffin, the objection is made

by some that it is an imitation of Gentile custom (Hukat Hagoi). But it is not necessarily a Christian custom. Christian funerals were once as bare and unadorned as Jewish funerals were (cf. L. Löw, *l.c.*). The same modern aesthetic spirit which beautified Christian funerals has brought the comfort of flowers to Jewish funerals also. Indeed, the Talmud (b. Betsa 6a), discussing the fact that on the second day of holidays all work may be done for the dead, adds: "even to cut myrtle branches for him," which Rashi explains as follows: "They used to place myrtle branches on the coffin in honor of the dead."

NON-JEWISH WIFE . . . *Permission is generally given for the unconverted non-Jewish wife or husband to be buried in the Jewish cemetery on the family plot. Some congregations will permit a Christian minister to officiate, although such permission is not generally given.*

The question whether an unconverted wife of a Jew or the unconverted husband of a Jewess may be buried in a Jewish cemetery has been discussed in full detail by the Responsa Committee of the Central Conference of American Rabbis. The Committee gave two reports on the question, both of which are printed in the *Yearbook*, Vol. XXIX, pp. 77, 80 ff. Dr. Kaufmann Kohler, who gives the first responsum, says that there is no express law forbidding the burial

of Christians in Jewish cemeteries and that congregations may therefore make their own decisions on the matter.

Dr. Gotthard Deutsch, who gives the second responsum on the same matter, deals with the subject in greater detail and says (p. 84) that while the Talmud does not decide the matter clearly, later codifiers derive from the Talmud a negative view on the matter; also that modern congregations are divided on this point, Orthodox congregations taking a negative view and Liberal congregations an affirmative one. Dr. Deutsch also lists (p. 82) a number of actual burials of Gentiles in Jewish cemeteries. Two of the incidents are of especial interest. A Venetian Christian who died in Avlona of the plague, in 1515, requested on his death-bed that he be buried in a Jewish cemetery because he feared that, being a Roman Catholic, the Greek Catholic Christians of the place would throw his body to the beasts. His request was granted. The second case is that of Stephen de Werbocz, ex-Palatine of Hungary, who died in Buda in 1541. He was buried in the Jewish cemetery. The reason is not clear but it was probably due to his conversion to Mohammedanism.

* * *

If the Christian who is to be buried in the Jewish cemetery had stipulated, or if relatives stipulate that a Christian minister officiate at the commitment service, should such permission be given? The predomi-

nant practice is not to give such permission. For if the deceased would have the right to be buried with Christian services in a Jewish cemetery, then he or she should logically have the right to have a Christian symbol over the grave. An observing Christian who desires a Christian service should properly be buried in a Christian cemetery. This question was discussed by the Responsa Committee of the Central Conference of American Rabbis (Vol. XLVI, pp. 124-129), and the opinion cited above was the decision of the majority of the committee.

However, one member of the Committee calls attention to the law in the Sh.A. Yoreh Deah 151 #12 (as to the relation of Jews to non-Jews): "We may provide for their poor, visit their sick, bury their dead, speak funeral eulogies and comfort their mourners in order to promote peace." This rabbi argues that if Jews may officiate for non-Jews, why should we not permit non-Jews to officiate in Jewish cemeteries for Christians?

The Committee suggested as alternative to its negative decision that at all events, the interment ritual should be of neutral character and that the tombstone should not bear the symbol of the church.

CHRISTIAN SCIENTISTS . . . *An analogous question is that of the burial of a Christian Scientist of Jewish birth. If the family of a Christian Scientist of Jewish birth asks to have him buried in the Jewish cemetery,*

is such permission to be given? May Christian Science Services be permitted?

The question depends upon whether Christian Science is to be considered compatible with Judaism. Many Christian Scientists claim that they are still Jews and in fact some of them insist that they are better Jews for their having added Christian Science doctrines to Judaism. The Central Conference of American Rabbis came to a definite conclusion on this matter. At the 1912 Conference a resolution was adopted declaring that Christian Science in its tenets and beliefs is essentially different from and in fundamental contradiction with Judaism and that it is impossible for a Jew to accept Christian Science without thereby denying Judaism. (Vol. XXII, p. 229.)

Of course, many of the people of Jewish birth who attend Christian Science churches, or read *Science & Health* or who avail themselves of the services of a Christian Science healer, have not definitely accepted Christian Science as their religion, but are merely experimenting with a new medicine for their ailments. But if a Jew definitely joins the Christian Science church he must be looked upon (according to the resolution of the Central Conference of American Rabbis) as one who denies Judaism, and has separated himself from Israel.

The law in the Shulhan Aruk (Yoreh Deah 345:5) states that those who separate themselves from the congregation, namely those who break off

the yoke of the commandments and are not included in Israel as to their actions, the honoring of the festivals, attendance at synagogue and schools, and also those who have apostasized to idolatry, we must not mourn them when they die, but their relatives must wear white garments (not black clothes of mourning) and eat and drink and rejoice. This would hardly seem to be a punishment to Christian Scientists who do not practice mourning or show grief at their own funerals.

Although one who has turned away from Judaism may not be mourned for, nevertheless, from the strictly legal point of view he is considered to be still a Jew, but "a Jew who has sinned." Of course, if he converts to idolatry (the worship of idols) or if he publicly violates the Sabbath, he is considered to be an idolator (cf. *Yad, Hilkot Akkum* II, 5; *Shulhan Aruk Orah Hayyim* 385 #3). Even so he retains certain specific Jewish legal rights. The Talmud (b. *Yebamot* 46b) discusses the case of a proselyte who returns to his original pagan faith yet marries a Jewess. The Talmud said that such a person must be considered an apostate Jew (*Yisroel Mumar*) and the marriage is valid. The *Sh.A. Eben Haezer* 44 #9 states this definitely as a principle, namely, that the marriage made by an apostate Jew (*Yisroel Mumar*) is absolutely valid and can be dissolved only by a Jewish divorce (a "Get"). This is the law which is generally accepted. (See also *Encyclopaedia Judaica*, Vol. II, p. 1218, bottom, article "Apostasie"; and

Eisenstein *Otsar Dinim u-Minhagim*, p. 207a, top, article "Mumar.") Also *Halakot v'Aggadot*, Michael Higger, N. Y., 1933, pp. 25 and 31.

That the apostate is still considered legally a Jew can be seen not only from the fact that his marriage to a Jewess is valid in Jewish law and requires a Jewish divorce, but it is also evident in the analogous case of Levirate marriage and Halitsah. When a man dies childless, his brother should either marry the widow (according to the older law) or free her by the ceremony of Halitsah. If, however, the surviving brother is an apostate, is the widow still bound to him so as to need Halitsah? One authority (Gaon Jehudai) says she is free, but the prevailing law is that she still needs Halitsah from him even though he is an apostate. See Maimonides *Yad*, *Hilkot Yibbum* I:6, and especially commentary of Joseph Karo, *ad loc.* (*Maggid Mishneh*), who quotes the Talmudic dictum as follows: "The *apostate* even though he has sinned is still an Israelite."

Isaac Arama (in *Akedat Yitshak* to Ki Setse, p. 82a) relates the following incident relevant to our discussion: a certain sage told me that one of the wise men of the Gentiles, when he saw that Jews demand a divorce (a "Get") from a Jewish apostate and this apostate stubbornly refuses to divorce his Jewish wife, then this Christian scholar asked him (the Jewish sage) why did they ask this Jewish divorce from him, i.e., from the apostate, for since he has left his religion they ought to consider him as if he no longer exists

and his wife ought to be considered as a widow in every respect; and the Jewish sage told me that his answer was to him that the apostasy did not come to him (i.e., the apostate) as an essential fact but as an accidental fact, like the change of a name or the change of dwelling, that he (the Jew) has not it in his power to change his essence insofar as he is a Jew. I (that is Isaac Arama) said to him, this answer is true according to our law and that is the meaning of the rabbis' statement in Sanhedrin 42a: "Even though he has sinned he is still an Israelite."

Solomon Zeitlin in *Jewish Quarterly Review*, New Series, Vol. XXXIV, pp. 28-37, cites a long series of responsa from the Geonim, Rashi, Maimonides, Isaac of Vienna, Moses Isserles, Elijah Mizrahi and others. From these responsa (p. 29): "It is quite clear . . . a Jew born of Jewish parents was still considered a Jew if he accepted another religion."

The present status of Orthodox law with regard to the burial of an apostate is discussed in full in Greenwald's *Och Letsoro*, p. 147, where the decision of Moses Sofer is quoted to the effect that it is a duty to bury him in a Jewish cemetery. Moses Sofer, the great Orthodox authority (Yoreh Deah #341) bases his decision upon the fact that those who were put to death by the court in ancient times, which included those who were apostates to idolatry, were nevertheless buried by Jews although of course not in the burial places of their fathers (the law requires that after a while they may be removed and be buried

with their fathers). The decision of all authorities finally is in accordance with the decision of Moses Sofer that Jews bury the apostate and bury him in a Jewish cemetery but apart from the burial places of other Jews.

We must, therefore, treat the Christian Scientist of Jewish birth in accordance with the Talmudic dictum: "Although he has sinned he is still an Israelite" (b. Sanhedrin 44a). We accord him the right of burial in the Jewish cemetery. There can also be no objection to a rabbi officiating at the funeral since it is permissible for him to officiate even for pagan idolators. "We may bury dead of idolators, to pronounce eulogy over them, to comfort their mourners, thus to promote peace" (Sh.A. Yoreh Deah 151 #12 and 367 #1). However, from the decision of the Conference of Rabbis (cited above) it is clear that a rabbi cannot in conscience participate in a funeral service with a Christian Science practitioner, the two religions being "in fundamental contradiction." It follows, furthermore, that a Jewish congregation cannot permit Christian Science services to be conducted in the Jewish cemetery.

Jehuda Leib Zirelsohn in his Responsa "Atse Halebanon" #65, discusses the question whether members of the Russian sect Subotniki (a sect which adopted certain Jewish customs such as observing the seventh day instead of Sunday) may be buried in a Jewish cemetery. His answer is that if such Subotniki desire it, they may be buried in the Jewish

cemetery but a permanent space of four cubits must be maintained between their grave and the grave of a full Jew.

CRIMINALS AND SUICIDES . . . *In Mishnaic times the bodies of criminals executed by order of the court were not buried in their family tomb but were interred in one of two special sepulchres set aside for this purpose (m. Sanhedrin VI, 5).*

This rule developed into the general law that wicked people were not to be buried by the side of the righteous people (b. Sanhedrin 49a; Sh.A. Yoreh Deah 362 #5). In medieval cemeteries various rows of graves were laid out and people were buried according to their status (cf. *Encyclopaedia Judaica*, Vol. VII, p. 619, article "Grab").

Such distinctions are no longer maintained. Liberal congregations permit the burial of sinful people in their family graves, thus following the principle that death in itself is an atonement for sin (cf. Sifre to Numbers #112, ed. Friedman, p. 33a). It is noteworthy that the Mishnah (m. Sanhedrin VI, 6) provides that after a time the bones of criminals may be removed from the graves belonging to the Sanhedrin and reburied in the family sepulchre since death and shame were considered to have affected atonement for the sin (cf. Rashi, *ad loc.*, b. Sanhedrin 46a).

As for suicides, the Shulhan Aruk (Yoreh Deah

345) says that none of the regular mourning ritual should be followed. However, see the responsum in *Central Conference of American Rabbis Yearbook*, Vol. XXXIII, p. 63:

" . . . according to Jewish law one is considered a suicide only when there is absolute certainty that he premeditated and committed the act with a clear mind not troubled by some great fear or worry which might have beset him for the moment and caused him temporarily to lose his mind. In the absence of such certain evidence he is given the benefit of the doubt . . . whenever possible we should try to spare (the surviving relatives) the disgrace which would come to them by having their relative declared a suicide."

Thus, for example, the great Orthodox authority, Moses Sofer in his Responsum #326 (Yoreh Deah), gives many reasons for giving the alleged suicide the benefit of the doubt as to whether he should be adjudged guilty of the crime of deliberate self-destruction; and certainly we should consider the feelings and reputation of his family. See also Eliezer Deutsch, *Duda-e Hasadeh* #39.

In the spirit of the above responsa, it is the general custom among Liberal congregations to bury suicides in their family plots.

TWICE WIDOWED . . . *If a twice-widowed woman dies, the question of whether she should be buried with her first or her second husband is determined*

by her own previously expressed wishes or the sentiments of the family.

There is considerable rabbinic opinion on this question. Wolf Leiter in the book of *Responsa Bet David*, Vienna 5692, Responsum #134, deals with this question. He cites many authorities whose discussion centers around the statement in b. Yebamot 55b, that after death the wife is nevertheless considered to be of her husband's flesh. This in turn is based upon the phrase in Leviticus 21:2 in which the deceased wife of the priest is referred to as "his flesh." The conclusion which is arrived at here is that the wife should be buried by her first husband if she did not have children by her second husband.

However, an entirely different conclusion is arrived at by the great Orthodox authority, Moses Sofer (Hatam Sofer, Yoreh Deah 355). Moses Sofer begins with the specific question as to whether a woman who is remarried should go into mourning when the bones of her first husband are disinterred, the law being (Sh.A. Yoreh Deah 403 #1) that all those who are in duty bound to mourn for a man when he dies, must go into one-day mourning when his bones are later disinterred for removal to another grave. This form of the question is a crucial one since there can be no doubt of the fact that when this woman was the wife of her first husband when he died, she was in duty bound to mourn him when he was buried. Now that she is remarried and his

bones are being disinterred, does the old relationship of husband to wife persist? In answer to this question, Moses Sofer lays down the clear principle that her second marriage breaks entirely the relationship of the first marriage. She is *not* in duty bound to mourn at the disinterment of the bones of her first husband. She is no longer related to him. Moses Sofer bases his argument upon the relationship of a priest to his unmarried sister (Leviticus 21:3). As long as the sister is unmarried, the priest may "defile" himself by contact with her dead body, i.e., he must participate in her burial even though he is a priest and as such is generally forbidden to come into contact with dead bodies. When, however, she is married, he no longer may defile himself in contact with her body if she dies. Now, argues Moses Sofer, this is an *a fortiori* argument; if the relationship of brother and sister, which is a blood relationship, is broken by the sister's marriage, then surely the relationship of husband to wife, i.e., of the wife to her first husband, should surely be completely broken by her second marriage. Therefore, according to the opinion of Moses Sofer, there is no doubt that the woman must be buried with her *second* husband.

By contrasting the arguments first given (in *Responsa Bet David*) with the arguments of Moses Sofer which arrive at mutually opposite conclusions, it is evident that the law on the matter is not definite at all and quite undecided. Therefore, whether a twice-widowed woman should be buried by her first

husband (since "after death she is still considered his flesh") or by her second husband (since the second marriage entirely destroys the relationship which existed in the first marriage) is quite an open question and can be decided according to the sentiments of the people involved.

See *Och Letsoro*, p. 145 #38, where recent discussion and debate on the subject are recorded.

DISINTERMENT . . . *Disinterment is generally permitted. The requests for permission to disinter are usually prompted by a desire to move the body of the deceased to a family burial plot.*

Orthodox law permits disinterring a body under certain special circumstances. The Shulhan Aruk (Yoreh Deah 363 #1) states the law plainly: It is not permitted to disinter a body to move it from one grave to another except to rebury him among his own for it is pleasing to a man to rest with his ancestors.

This has given rise to a dispute as to whether the law permits disinterment only for reburial on a family plot *already* occupied by an earlier generation, or whether it also permits disinterment for reburial in a new family plot acquired for future family use. Could the latter be considered burial "with one's father"? (Such a dispute was brought before the Law Courts of New York. See Kohler in *Jewish Encyclopedia*, Vol. IV, p. 613, article "Disinterment.") Eisen-

stein (article "Pinnui Mesim") states that disinterment for reburial in a *new* family plot is permitted provided that when the body is first buried in the public part of the cemetery the condition is made that should the family later buy a family plot, the intention is to remove this body to the family plot. This, of course, is based upon the law in this section of the Shulhan Aruk that disinterment is always permitted provided the first burial was made with the intention of removing the body later to another grave. It was upon the basis of this law that Rabbi Isaac Elhanan Spector of Kovna permitted the temporary burial of a body in a mausoleum (cf. note on mausoleum).

The law in the Shulhan Aruk also permits disinterment for the purpose of reinterment in Palestine; or if the present grave is not safe against robbers or if water seeps into the grave. See also Pis-he Teshubah (Sh.A., *ad loc.*) which quotes the opinion of Hakam Tsevi permitting disinterment from Gentile-owned land for reburial in a Jewish cemetery. Eisenstein (*Otsar Dinim u-Minhagim*, p. 339, article "Pinnui Mesim") gives a number of recent decisions by leading Orthodox rabbis permitting removal of bodies if for example a road or a railroad were to be built through the cemetery.

VISIT OF CONSOLATION AND GIFTS OF FOOD . . . *It is customary for friends to visit the house of mourning during the first week; and for intimate friends to*

bring gifts of food for the mourning family particularly for the evening after the funeral.

The Bible and the Talmud are replete with references to the custom of visiting the bereaved in order to comfort them. Thus when Jacob mourned for his son Joseph whom he thought dead (Genesis 37:34, 35): "All his sons and all his daughters rose to comfort him." In fact, the Talmud considers that God Himself comes as it were to comfort the mourners. B. Sotah 14a: "As God comforts the mourners since it is written (Genesis 25:11): 'And it came to pass after the death of Abraham that God blessed Isaac,' so comfort thou the mourners." The Talmud also gives innumerable instances of the scholars paying visits of consolation to each other in time of bereavement. See *Jewish Encyclopedia*, Vol. IV, p. 233, article "Consolation."

Tradition records the fact that in the time of the Second Temple the consolation of mourners was considered so worthy a deed that an opportunity was given to the entire community to voice its consolation. Thus m. Soferim XIX, 12, ed. Mueller, p. xxxviii, says that there were two special gates in the Temple at Jerusalem, one for bridegrooms and the other for mourners. On the Sabbath the inhabitants of Jerusalem would go up to the Temple mount and take their places between these two gates so as to congratulate the grooms and to comfort the mourners. The present Orthodox custom is related to this ancient

Temple custom. On Friday evening mourners leave the house of mourning and come to the synagogue. At the words in the hymn "Come in peace" the mourners are brought into the synagogue and the people utter the sentence of consolation.

When visitors come to pay their respects to the house of mourning, the older custom was that the mourner should not greet the visitors or be greeted with the greeting "shalom" (Sh.A. Yoreh Deah 385 #1). In fact, the custom is that there should be very little conversation. The Talmud (b. Berakot 6b) says: the reward (gained from) in visiting the house of bereavement is (earned by) silence. The custom of quiet consolation is derived from the fact that when Moses spoke to Aaron after the death of Aaron's two sons, "Aaron was silent" (Leviticus 10:3). Also the Shulhan Aruk (Yoreh Deah 385 #1 ff.) gives the detailed laws as to what extent greetings may be answered at the various stages of mourning. *Nehar Mitsra-im*, a commentary on the Shulhan Aruk, giving the customs of the Jews of Egypt (p. 154a #125) says that other greetings (not involving the word "shalom") such as "good morning" are permitted. (See also the commentary Ba'er Heteb to Yoreh Deah 385 #1.)

The traditional law requires that the first meal which the mourner eats on returning from the cemetery must be provided by his neighbors or friends. The Talmud states (b. Mo-ed Katan 27b) that a mourner on the first day is forbidden to eat his own

food. This the Talmud derives from Ezekiel 24:16, 17 where God forbids Ezekiel to follow the customary mourning ritual. God says: "Neither shalt thou make lamentation nor weeping . . . make no mourning for the dead . . . put thy shoes upon thy feet . . . and eat not the bread of men." The latter statement: "and eat not the bread of men" is taken by the rabbis to mean the bread belonging to other people than yourself. Ezekiel, who was forbidden to follow the ritual of mourning, was told to eat his own food, whereas the mourner must eat the food belonging to others.

There is a more direct Biblical reference to the custom of providing food for mourners. When David (II Samuel 3:35) mourned the death of Abner, the people came to comfort him and the Bible says: "And all the people came to cause David to eat bread." The word "to cause to eat" ("Lehavrot") has given the name to this formal meal of consolation, namely, "Havra-ah." While the meal may consist of wine, meat or whatever else is brought, it must begin (according to ancient custom) with the symbolic food of lentils or eggs. (See Sh.A. Yoreh Deah 378 #9.) The eggs are clearly the symbol of resurrection, while both the lentil and the eggs are round and that is taken by the Talmud to indicate that bereavement is like a round wheel that rolls along to every life. The Talmud bases this custom upon the Biblical text in Genesis 24:29. Jacob made a pottage of lentils. The Talmud (b. Baba Bathra 16b) says that the day when

this occurred was the day when Abraham died and Jacob made this meal as a meal of consolation for Isaac his father since just as a lentil is round so mourning rolls around until it touches the lives of all human beings.

While Reform custom does not hold to the ritual of bringing the special foods prescribed, nevertheless it maintains the spirit of the humane and friendly tradition. Friends of the bereaved family bring all types of food to the house of mourning on the day of the funeral and during the rest of the week.

MIRROR COVERED . . . The popular custom to turn the mirrors to the wall or to cover them, in the room where the body lies or where the deceased had died as well as other rooms in the house, has no basis in Jewish law and, in fact, is part of general folk-lore. It was observed in Scotland, in Germany and elsewhere. For a full discussion of this bit of folk-lore, see A. P. Bender, *Jewish Quarterly Review*, 1895, Vol. VII, p. 117. The custom is explained in many ways, many of which associate the mirror image with the soul of the departed. Another explanation quoted in the above mentioned article is that if the mirrors in the room where the corpse is, were not covered up, people might see the coffin twice, i.e., the coffin and its mirror image, which would betoken to the superstitious a second death in the house during the coming year. This custom is not observed by Reform Jews.

LIGHT IN HOUSE . . . *Generally a light is kept burning in the house of mourning for the first week after the funeral.*

The custom of burning a light in the house of mourning during the seven days is not ancient. It is mentioned by the author of Ma-avor Yabbok, Aaron Berechiah ben Moses of Modena, Italian Cabalist of the seventeenth century, in the section S'fas Emes, Chapter XV. He speaks of the custom of lighting a candle in the presence of the dying. He gives a number of Cabalistic reasons for this and then says: "From all this the scholar can find a reason to praise the custom of lighting a light for the dead in his house for seven days." He also indicates that the sum of the letters of ner doluk (the burning candle) is equal to the sum of the letters of the word "Shekinah," the Divine Presence. He also connects the idea with the verse in Proverbs 20:27: "The spirit of man is the lamp of God." See also Sefer Matamim, Warsaw, 1889, p. 18, #49, which says that the light kindled in the house of the dead for seven days gives rest to the soul of the deceased. S. Baer in *Totsa-ot Hayyim*, Roedelheim, 1871, p. 78, says that this custom of burning a light for seven days in the house of the deceased is based upon the instructions which Judah Hanasi gave to his sons on his death-bed. (b. Ketubot 103a.) He directed that his house should be left just as it was when he lived. His words were: "Give honor to your mother, let the light be burning in its

*The way be challenged
as being an unnecessary expense
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that the house should be left as it was when he lived.*

accustomed place and the table set in its accustomed place."

It is also the custom to burn a candle in the house for twenty-four hours of the Yahrzeit, the anniversary of the death. D. Flattau in *Encyclopaedia Judaica*, Vol. VIII, 779, believes that the Yahrzeit light must be of Christian origin and spread from German Jewry over the rest of Jewry. However, Brueck in *Volksitten und Ritualien*, Frankfurt, 1840, p. 67, gives references from the Church Fathers and from Herodotus and other sources, showing that the custom of burning a light for the dead, particularly on the graves, was found among the Greeks, Romans and Persians. Therefore the custom is virtually a universal one. Even though the older Jewish sources have no reference to it, it is a natural expression of pious devotion based upon the analogy of the light with the soul as in Proverbs 20:27: "The spirit of man is the lamp of God."

Thus too there was a custom to kindle lights in the synagogue on the Day of Atonement in memory of departed parents. (Isserles, *Darke Moshe*, to Tur Orah Hayyim 610, note 4, cited in the name of the Kol bo.)

FOR WHOM TO MOURN . . . Full mourning, including the reciting of Kaddish, is observed for the following seven relatives: father, mother, sister, brother, son, daughter, husband or wife.

The seven relatives for whom one must observe full mourning are father, mother, sister, brother, son, daughter, husband or wife. This list of relatives is based upon the Biblical law (Lev. 21:2) which enumerates the relatives with regard to whose funeral the priest may come in contact with the dead. This list is enlarged by the rabbis to include the wife (who is not specifically mentioned in the text) and half-sisters and brothers. (See Sifra, *ad loc.*, and b. Mo-ed Katan 20b. Also the Sh.A. Yoreh Deah 374, #4.) The Talmud, b. Mo-ed Katan 20b, also enlarges the list so as to require the observance of mourning for relatives of relatives, thus (#6): "All for whom one must mourn, one must mourn with him if a relative of his dies." This is explained more specifically (cf. Yoreh Deah #7) that when we mourn for the relatives of relatives, it must be for a *blood* relative of a relative not for their relative by *marriage*. Thus, for example, one observes full mourning for a brother's child but not for a brother's wife. However, Isserles in note to #6 says that it is the custom now to diminish such mourning and gives various relaxations of the above rule.

The mourning rites are not observed for a child who does not live a full month. See the various exceptions and amplifications of this rule in Sh.A. Yoreh Deah 374 #8. For a child under a month, the regular funeral services are not held. The Tsidduk ha-din and Kaddish are not recited. (See Sh.A. Yoreh Deah 344 #4.) However, Isserles says it is

not the custom to have these funeral prayers unless the child is a full year of age. Nevertheless Ba'er Heteb says that in most congregations the custom is to recite the Tsidduk ha-din and the Kaddish for a child over one month.

A sick person, presumably a person dangerously sick, is not required to follow the rituals of mourning. In fact, he should not be told of the death of his relative (Sh.A. Yoreh Deah 337 #1).

SHIV'AH . . . *The family generally stays at home for a week after the funeral, although individuals may leave the house to attend to urgent business matters particularly such matters as pertain to the estate of the deceased.*

Jewish tradition prescribes various successive periods of mourning for the dead, each period of varying length and each progressively less severe than the preceding.

I. *Aninus*. The severest period of mourning is the time between the death of a relative for whom he is in duty bound to mourn (see above p. 156) and the time of the burial. A person who has been bereaved is called in the Mishnah and Talmud "he whose dead lies before him," also he is called an "Onen," a man in deep mourning. The period is called "Aninus." The Talmud (b. Mo-ed Katan 23b) describes the intense mourning incumbent upon an onen: "he

whose dead lies before him must eat in another house or in the house of his neighbor or must put a curtain up . . . must not eat meat or drink wine and he is free of the commandments to recite the Shema or Tefillah or all the commandments mentioned in the Torah except on the Sabbath when he may eat meat, drink wine, etc." For full details on the period of Aninus, i.e., before the burial, see Sh.A. Yoreh Deah 341.

II. *Avelut* (mourning). This term covers the period of mourning after the funeral. The mourner is called an "Avel."

a) The first period of mourning is composed of the first three days after the funeral. This period is the strictest of all the *Avelut*. It is referred to in the Palestinian Talmud (j. Mo-ed Katan, Chapter III, 82b, middle): "The strength (i.e., the severity) of the mourning is only for three days." The Sh.A. Yoreh Deah 393 #1 says that in the first three days a mourner may not go to the cemetery for another funeral that may have occurred (unless it is in his own family) but after the first three days he may do so. Also, after the first three days he may work if it is essential. See Sh.A. Yoreh Deah 380 #2: "The first three days he is forbidden to work even if he is poor and dependent upon charity. After that, if he be poor, he may work within his home." There are, however, exceptions in the cases where neglect would involve considerable loss. See especially Sh.A. Yoreh Deah 380 #5 and the note of Isserles.

b) Shiv'ah. (7) The first seven days of mourning, called Shiv'ah which means seven, include the first three days. During these seven days the mourner may not leave the house except on Sabbath to go to the synagogue. (Sh.A. Yoreh Deah 393 #2.) However, see in Isserles' note the exception permitted to the strict observance to this rule. The period of seven days of mourning is based upon a number of Biblical precedents. Joseph mourned for seven days for his father Jacob (Genesis 50:10): "He made a mourning for his father seven days." Likewise in Apocrypha Ecclesiasticus 22:12: "Seven days do men mourn for him that is dead." Furthermore, the rabbis in the Talmud derived the rule of seven days Shiv'ah, of mourning, from certain Biblical hints. Thus (b. Mo-ed Katan 20a): "Whence do we know that seven days is the period for mourning? For it is written, Amos 8:10: 'And I shall turn your feasts into mourning'; just as a feast is seven days so shall the period of mourning be seven days." Likewise they find a reference to the mourning period in the statement in Genesis 7:4: "For yet seven days (i.e., in seven days time) will I cause it to rain upon the earth for forty days and forty nights." And they explain that the coming of the flood was delayed for seven days because these were the seven days of mourning of Methuselah who had just died (b. Sanhedrin 108b).

c) Sheloshim. The next period of mourning still less in severity is the period of thirty days (sheloshim—thirty) which includes the seven days. This period

of thirty days likewise has a Biblical source. In Deuteronomy 34:8 we are told that Israel wept for Moses in the plains of Moab for thirty days. Likewise the captive woman is commanded (Deut. 21:13) to mourn for her parents for a full month. There is also a Talmudic basis (b. Ketubot 103a bottom and b) when Judah Hanasi was dying he asked that the school be reopened thirty days after his death. During the thirty days the mourner may not participate in any celebrations or feasting.

d) The Year. If it is a parent who died then the prohibition against feasting and amusement which applies to the thirty days, applies for the entire twelve-month period. For all other relatives the mourning ends with the thirty-day period.

The spirit of the Jewish law is against excessive mourning. This is indicated in the discussion in b. Mo-ed Katan 20a. A "close" report (of death) requires the observance of the seven days and the thirty. A "distant" report does not require more than one day of mourning. What is a "close" report and what is a "distant" report? If he hears of the death within thirty days, that is a "close" report and if he hears of the death after thirty days, it is a "distant" report. This is the opinion of Rabbi Akiba (i.e., that a "distant" report requires only one day of mourning) but the other rabbis say whether it be a "close" report or a "distant" report he must observe the seven days and the thirty days. Rabbi bar bar Hannah said in the name of Rabbi Jochanan, wherever you find

that an individual decides the law leniently but the majority decide it severely, the law is according to the majority except in this case, for here, although Rabbi Akiba decides it leniently and the rabbis decide it severely, the law is according to Rabbi Akiba, for Samuel said: the law is according to the words of him who decides leniently in the case of mourning. (See also *Sefer Ha-pardes* of Rashi, p. 88.)

The Talmud (b. *Mo-ed Katan* 27b), commenting upon the verse in Jeremiah (22:10): "Weep ye not for the dead, neither bemoan him" counsels against excessive mourning and also sums up the spirit of the three periods of mourning (*avelut*) as follows: "Do not weep for the dead, etc., means, do not mourn excessively, that is, the three days are for weeping, the seven days for eulogizing, the thirty days for washing and cutting the hair. Thereafter God says to you, do not be more merciful than I am." The Law diminishes the number of days of mourning when the bereavement occurs close to a festival. (m. *Mo-ed Katan* III, 5; b. *Mo-ed Katan* 19a and b; Sh.A. *Yoreh Deah* 398.) If the seven days of mourning are completed before the festival comes, the rest of the thirty days are cancelled except in the case of mourning for father and mother. (See *Ma-avor Yabbok*, ed. Landshuth, p. 111.) Thus, too, if the burial takes place right before the holiday and the mourners can observe the *Shiv'ah* (the phrase is "to sit *Shiv'ah*" because they sit upon the ground or low stools) for one hour before the holiday, then the advent of the holi-

days cancels the rest of the Shiv'ah. There must be no mourning during the eight days of the festival but still those days are counted off the mourning period. Thus when the festival has ended (whether it be Passover, Shabuot, the Day of Atonement or the New Year) fifteen days are subtracted from the period of thirty days. In other words, the mourner observes Shiv'ah for an hour before the holiday and observes only fifteen days after the holiday to complete the thirty, sheloshim. If the festival is Sukkot, then Shemini Atseret, which ends Sukkot, counts as an additional seven-day festival. In other words, the mourner observes Shiv'ah for an hour before the festival and after the festival, having counted off twenty-two days, observes eight days more to complete the thirty, sheloshim. If, however, the burial takes place within the holiday, the period of mourning must begin after the festival. (Sh.A. Orah Hayyim 548.)

No mourning must be observed on Sabbath and Purim if they come within the mourning period. They count among the days of the period although they do not subtract any of the total as do the other festivals. (Sh.A. Orah Hayyim 696 #4, note of Isserles.)

The times of mourning mentioned above are observed on Hanukah except that during the services at the house of mourning the Halel psalms of praise are omitted. (See Hayye Adam, Laws of Hanukah, #40.)

MINYAN . . . *Some families have services (Minyan) for three nights beginning with the night of the funeral; others will have Minyan for one night, while many families do not have Minyan at all. Minyan is never held on Friday evening or the evening of a holiday.*

Since it is an Orthodox custom to pray with the congregation every day whenever that is possible, and since a mourner cannot leave the house during the first seven days of his mourning (except on the Sabbath), it has become customary for ten men (a Minyan, i.e., a quorum) to gather in the house of mourning and there to pray the regular prayers. Thus the congregation is brought to the mourner who cannot go to the synagogue. There is no evidence that this was a regular custom in Talmudic times although the Talmud records one instance that resembles this custom. B. Sabbath 152a and b states the rule that if a man dies and leaves no mourners, ten men should come and dwell in his house for seven days of mourning. Rabbi Judah gathered ten men to dwell in the house of such a deceased man who left no mourners. Minhage Yeshurun #211 bases the later custom of praying in the house of mourning upon this Talmudic incident rather than upon the natural fact that the mourners cannot go to the synagogue during the seven days. The Sh.A. Yoreh Deah 376 #3 mentions the custom of ten people gathering in the house of a deceased who has no mourners, but Isserles in

his note refers to the fact that Jacob ben Moses Moellin (Mayence 1365-1427, *Hilkot Semachot*, ed. Warsaw, 1874, 83b top) speaks of it as a custom for ten men to pray all the seven days in the house of the deceased (except, of course, on the Sabbath).

The reason that Reform Jews, when there is a Minyan, restrict the Minyan services to three days is because the three days are the period of heaviest mourning. (See above p. 158.) However, since in general it is not the custom among Reform Jews to pray daily in the synagogue (i.e., with a Minyan) the custom of having a service with a Minyan in the house of the deceased is observed for only one day or is often dropped altogether.

CLOTHES OF MOURNERS . . . *The wearing of dark clothes as a symbol of mourning is generally observed, some wearing them for a month and some for a year.*

The Bible gives a number of descriptions of the dress and demeanor of those in mourning. When Jacob heard the tidings that Joseph was dead (Gen. 37:34): "Jacob rent his garments and put sackcloth upon his loins." A widow wore garments of mourning (Gen. 38:14): "And she (Tamar) put off from her the garments of her widowhood." When Joshua and the elders wanted to express mourning, we are told (Joshua 7:6): "Joshua rent his clothes and fell to the earth upon his face . . . he and the elders of Israel

and they put dust upon their heads." The putting of dust upon the head and the wearing of sackcloth never became a permanent custom in Jewish life but the tearing of the garments and the wearing of sombre clothes did become a general custom.

Keriah (rending the garments). The Biblical custom of rending the garments was greatly elaborated in general Jewish law. It was practiced not only for the seven relatives for whom one was in duty bound to mourn, but also for a teacher or when one saw the ruined cities of Judah and the ruins of Jerusalem, or when one heard evil tidings such as the defeat of the army, or when one heard God's Name blasphemed. In fact, all who were present at the death of a Jewish man or woman are in duty bound to tear the garments. (Sh.A. Yoreh Deah 340 #36, #37, #38 and #5.) The width of the cut must be a hand's breadth.

The rules of *Keriah* distinguish between mourning for father and mother and mourning for other relatives. For father or mother the cut must be on the left, opposite the heart, for other relatives on the right. For father and mother all the garments must be cut until the heart is bared. For other relatives only the upper garment need be cut. For parents the cut may be basted up after the thirty days of mourning, for other relatives after the seven days of mourning. For parents that cut may never be permanently sewed and for other relatives it may be permanently sewed after the thirty days. (b. Mo-ed Katan 22b and

Sh.A. Yoreh Deah 340.) The blessing: "Praised be Thou O Lord the righteous Judge" is recited at the Keri'ah while the mourners stand by the coffin before the burial either at the house or in the cemetery. Keri'ah is not performed on the Sabbath (see the commentary of Maimonides to m. Sabbath 13, 3) and holidays but at half-holidays, Hol Hamo-ed, one may perform the Keri'ah for parents but not for other relatives. (Yoreh Deah 341 #31, see the note of Isserles.)

Black Garments. The Bible does not clearly say that the garments of mourning were black but the Talmud and later literature make that quite clear. Rabbi Jannai (b. Sabbath 114a) says: "Do not bury me in black garments lest I appear like a mourner." It is also indicated in Boraita in Yoma 39b. Simon the Just predicted that he would die within that year and they asked him how he knew and he said: "Every Day of Atonement a certain old man clad in white walks with me. This year he was clad in black." After the festival he was sick for seven days and died. In Semachot, Chap. II, #8 (edition Higger, p. 106), the law is given that "those who separate themselves from the congregation are not to be buried with the usual burial rites, 'their brethren and other relatives wear *white* and eat and drink and rejoice that the enemies of the Almighty perish.'"

The custom among the Jews in Egypt is to wear black garments all the twelve months. See Nehar Mitsra-im, p. 138a, Avelut #20. Greenwald in *Och*

Letsoro, p. 21, #7, quotes Yom Tov ben Abraham Ishbile (Ritba), Spanish Talmudist of the fourteenth century, to the effect that these black garments do not need Keri'ah since the entire garment is a symbol of mourning. However, Azulai says that even the black garments need to be cut.

Among Reform Jews Keri'ah, the tearing of the garment, is no longer practiced, but the practice of wearing dark clothes during mourning is still generally observed. Usually it is worn for the first month of mourning, some wearing it a whole year.

SABBATH TO SYNAGOGUE AND KADDISH . . . *On the first Sabbath following the funeral, the family comes to the synagogue to participate in the reciting of the Kaddish in memory of the deceased, and thereafter for the whole year of mourning. Some recite the Kaddish for eleven months and then after a pause of a month recite it again at the first anniversary (Yahrzeit).*

The ancient Kaddish prayer is referred to in the Talmudic literature chiefly by its famous response: "Yehe sheme rabo," "Let His great Name be blessed forever and to all eternity." This prayer was originally used not in connection with the services but at the close of a sermon or a learned discourse. The Talmud emphasizes the merit of making the response aloud. They consider that it is pleasing to God so to be

praised (b. Berakot 3a). The Talmud likewise says (b. Sabbath 119b) that he who makes this response will win forgiveness for his sins. And also (b. Sotah 49a) that the world is maintained by this response which comes at the end of a learned discourse. When this prayer of praise became part of the regular worship, it was recited a number of times at various parts of the service and in various forms, half-Kaddish, full Kaddish, the Kaddish of scholars, etc.

Apparently the first use of the Kaddish in memory of the departed was the recital of it in honor of departed scholars. In Gaonic times the idea arose that it had a mystic power to redeem the souls of the dead and the custom became wide-spread to recite it at the graveside during the funeral, then all the full year of mourning. Later this was changed in some localities to the recital for eleven months since, according to the Mishnah Eduyot II, 10, the wicked are judged for a year and no one wished to imply that his parent was wicked, the Kaddish was not recited for a full year but was interrupted at the end of eleven months and then repeated at the anniversary of the death a month later. However, this custom was not universal.

Although the medieval idea of the Kaddish as a prayer of redemption for the deceased is frequently mentioned, it was well understood that the prayer, containing no mention of the dead, and being primarily a prayer in praise of God's greatness, was recited to honor the memory of the deceased. Abraham Hurwitz, sixteenth century, in the ethical will which

he left for the guidance of his children, says, in the Introduction, p. 7, edition Warsaw, 1878: "For this Kaddish is not a prayer which a son prays in behalf of a father to God that God may raise him from the nether-world, but it is a virtue and a meritorious act in behalf of the dead when a son sanctifies God's Name in public and the congregation answers after him: 'May God's great Name be praised to all eternity.'"

This is what the Kaddish means to us. We declare thereby the merit of those whose parting we mourn, that they have instilled in us loyalty to God and devotion to His service and the serene acceptance of His Will so that in the presence of the congregation when we think of the departed we praise God's Name in serenity of heart.

Originally only a son recited the Kaddish for his deceased father. A daughter was permitted likewise to recite the Kaddish. It was also considered meritorious to recite the Kaddish for famous scholars. See note of Isserles to Sh.A. Yoreh Deah 376 #4: "There are places where other relatives say Kaddish for all their kin." See article "Kaddish" in *Jewish Encyclopedia*, *Otsar Dinim u-Minhagim*; and DeSola Pool, *The Kaddish*, p. 101, appendix B.

The observance of the anniversary of the death of a relative goes back to Talmud times. The Talmud (b. Nedarim 12a) speaks of a man taking a vow not to eat meat or drink wine and including in the formula of his vow: "As on the day on which his father

died." The ancient custom was to fast on the anniversary of the death of a father. The custom of fasting on the Yahrzeit is mentioned by Jacob b. Asher (Tur Orah Hayyim #568; and Joseph Karo to Tur Yoreh Deah #376 quotes the custom in the name of the Kol bo). (See also Sh.A. Orah Hayyim 568 #7, 8, 9.) However, it is not a general custom. See especially Eliezer Deutsch, *Duda-e Hasadeh* #45 as to the status of this fast; and also his *Peri Hasadeh* Vol. II, #64. Though the custom of fasting never became a fixed rule, it is still customary to observe the day solemnly and to avoid feasting and celebration. The observance of the day was motivated by a desire to honor the memory of one's father. (b. Kidushin 31b speaks of the duty to honor one's father while he lives and after he dies.) In the Middle Ages the custom arose in Germany and in the rest of northern Europe to recite the Kaddish on the day of a parent's death. The name "Yahrzeit" in itself indicates the German origin of the custom. See the long note of Isserles to Sh.A. Yoreh Deah 376 #4. This custom spread after the sixteenth century among the Sephardic Jews, many of whom borrowed the German name "Yahrzeit." See the article on "Yahrzeit" by Abraham Hoffer, *Hatsofeh*, Vol. X, pp. 116 ff.

There is some controversy in Rabbinic codes as to whether the Yahrzeit should be counted from the day of death or the day of burial, some saying that the Yahrzeit the first year should be counted from the day of burial and all other years from the day of

death, others saying that if there was an interval of three days or more between the death and the burial that only in that case should the Yahrzeit on the first year be counted from the day of burial and thereafter from the day of death. The general custom is, however, always to count from the day of death. (See Greenwald, *Och Letsoro*, 295 ff.)

For the custom of kindling a light to burn the twenty-four hours of the Yahrzeit day, see above p. 155. In Orthodox synagogues where public services are held daily, mourners recited the Kaddish during the services on the exact day of the Yahrzeit. Since in most Reform congregations there are public services only on Friday night or Saturday morning and Sunday morning, it is customary to go to the synagogue for the recital of the Kaddish at the services nearest the Yahrzeit date. It is likewise customary to recite the Kaddish for all the relatives whom one mourns.

There is a slight precedent in Orthodox custom for observing the Yahrzeit on the Sabbath preceding (rather than the Sabbath following the Yahrzeit date). Moses Isserles in his note to Sh.A. Yoreh Deah 376 #4, speaking of the custom of reciting Kaddish in honor of the dead, mentions also the custom of reading the Prophetical portion (the Haftorah) in their honor. Hence, if a man had Yahrzeit on the Sabbath, the privilege of being called up to read the Prophetical portion belonged to him. (See Abraham Gombiner, *Magen Abraham*, to Sh.A. Orah Hayyim

282.) Then the custom arose that those who had Yahrzeit in the middle of the week, on days when the Torah is not read, would be called up to read on the Sabbath *preceding*. (Cf. Eliezer Deutsch, *Duda-e Hasadeh*, Responsa #4 and #24.)

TOMBSTONE . . . *The tombstone or marker is placed at the grave at no especial interval after the funeral but at the convenience of the family. The prayers for dedication of the tombstone are generally read by a member of the family and sometimes by the rabbi. (See Union Prayerbook, p. 385.)*

The Bible has a number of references to tombstones or their equivalent. Jacob marked the grave of Rachel who died in childbirth on the way back to Palestine. (Gen. 35:20: "And Jacob set up a pillar upon her grave; the same is the pillar of Rachel's grave unto this day.") It may well be that there was no marker on the earlier family graves for no mention is made of a pillar or tombstone upon the cave of Machpelah which Abraham bought and in which he and many of his family were buried, whereas in the case of Rachel, who was not buried in the family grave but alone by the road, her grave needed a marker. The Bible also records the fact that a monument stood on the grave of a prophet, II Kings 23:17: "Then he (King Josiah) said: 'What monument is that which I see?' And the men of the city told him: 'It is the

sepulchre of the man of God who came from Judah, etc.'"

The word used in Genesis 35:20 for the pillar which Jacob placed on the grave of Rachel is "matzevah" which is the word still used in modern times for a tombstone. The Mishnah and the Talmud have two other words for grave markers, one is "nefesh" and the other "tsiyun." The "tsiyun" was chiefly for the purpose of indicating the presence of a grave so as to warn priests of the proximity of a body so that they may keep from violating the Biblical injunction which forbids the priest to come in contact with the dead (m. Mo-ed Katan I, 2). The "nefesh" was a monumental structure built in the form of a house in honor of the dead who is buried in the ground beneath. (See m. Shekalim II, 5.) Simon the Maccabee built a huge monument over the sepulchre of his family, i.e., a "nefesh." See I Maccabees 13:27-30: "Simon also built a monument upon the sepulchre of his father and his brethren, and raised it aloft to the sight, with hewn stone behind and before. Moreover he set up seven pyramids, one against another, for his father, and his mother, and his four brethren, etc." A hint as to the elaborateness of the monumental decoration of the graves is given in the Talmud (b. Sanhedrin 96b) where we are told that the Ammonites and the Moabites urged Nebuchadnezzar to march against Jerusalem. They said to him, speaking of the graves around Jerusalem: "their graves (i.e., the graves of the Judeans) are superior to your pal-

aces." Perhaps it was in protest against these very elaborate structures that Simon ben Gamaliel declared (j. Shekalim II, 47a) that we should not make monuments (nefesh) for the righteous since their words are their memorial.

In earlier times there was no inscription on the tombstones although later, under Greek and Roman influence, the custom of inscriptions on the stone was adopted. See *Encyclopaedia Judaica* Vol. VII, 622 ff. for archeological material concerning the Greek and Latin inscriptions on Jewish tombstones from the second to the fifth century. In the Jewish catacombs outside of Rome the inscriptions on tombs are almost entirely Greek or Latin. The Talmud is aware of the custom of inscriptions on tombs. B. Horoyot 13b speaks of him "who reads inscriptions on a grave."

Abraham Firkovich, the Karaite, in Avne Zikoron, speaks of ancient Karaite tombstones as early as the first century in Crimea. Many scholars however doubt the authenticity of his statements in this regard. The earliest European tombstones go back to the seventh century.

The north European Jews, German and Polish, used vertical tombstones, while the Spanish, Portuguese and eastern Jews used horizontal slabs lying flat over the grave. It may well be that the original form was derived from the sarcophagus-like structure over the grave, the north Europeans using the vertical end of the sarcophagus for the inscription and grad-

ually omitting the rest of the structure, while the Sephardic Jews used the flat or round top of the structure and gradually brought it down to ground level.

The present custom among Orthodox Jews is to set the tombstone after a year has elapsed since the death although there is a considerable body of legal opinion which considers so long a delay as wrong and which would require the setting of the tombstone as near the time of burial as possible. (See Greenwald, *Och Letsoro*, pp. 288 ff.) Reform Jews do not follow any fixed rule as to the time for the setting of the tombstone.

The Orthodox custom of leaving some blades of grass or a pebble on the tombstone after visiting the grave is referred to in the commentary *Be'er Hetev* to *Sh.A. Orah Hayyim* 224, 10, where the author quotes an earlier authority as follows: "As for the placing of grass or a pebble on the tombstone, this is merely for the honor of the dead to show that one had visited the grave." S. H. Lieben in the article "Grab" in the *Encyclopaedia Judaica* (Vol. VII, p. 622) suggests that this custom may have been derived from the fact that the ancient tombstone was really a heap of stones which was built up by friends and relatives at the funeral. The custom of leaving pebbles on tombstones is not observed by Reform Jews.

VISITING CEMETERY . . . *The custom of visiting the cemetery is not generally confined to any special days*

or after any fixed interval following the funeral. People usually visit the cemetery whenever they are so inclined. Some prefer to go on Memorial Day or the week before the New Year or between the New Year and the Day of Atonement; but not on the Sabbath or holidays.

The custom of visiting the cemetery for prayer is frequently referred to in the Talmudic literature. In general it was the custom on all public fast-days to visit the cemetery as part of the penitential ritual. The Talmud (b. Ta-anit 16a) gives two explanations for the custom, one: "For we are counted as if dead before Thee." The other explanation is: "That the dead may intercede for us." Tosafot, commenting on this passage, says: "From this is derived the custom everywhere to visit the cemeteries on the ninth of Ab for the ninth of Ab is a public fast-day." Indeed the custom has spread to visiting the cemetery on all fast-days, during the entire month of Elul, the ten days of penitence, also on the day before the New Year and the day before the Day of Atonement. See Moses Isserles to Sh.A. Orah Hayyim 581, 4 and 605. The idea of praying in the cemetery that the virtues of past generations may aid us, is poetically described in the Midrash Rabba to Exodus, Chapter 44:1, where an explanation is given why Israel is compared in the Bible to a vine, especially in Psalm 80:9: "Thou didst pluck up a vine out of Egypt." The Midrash says: "Just as a vine leans upon dead pieces of

wood, thus living Israel leans upon the fathers." The Talmud (b. Sotah 34b) tells that Caleb, when he became aware of the evil intention of the spies whom Moses sent to investigate the land of Canaan, went and bowed down upon the graves of his ancestors and said to them: My ancestors, pray for me that I may be delivered from the plans of the spies.

It is customary also to visit the cemetery on the anniversary of the death (Yahrzeit). Rashi to b. Yebamot 122a top, quotes the responsa of the Gaonim to the effect that in Talmudic times they observed the anniversary of the death of famous men and every year on the anniversary of the death the students and other people would gather and visit his grave. This is the basis of the custom of visiting the cemetery at the anniversary of the death (Yahrzeit).

Some people are under the impression that it is not permissible to visit a grave before a year has passed after the burial. There is no foundation in Jewish law for this idea. The Sh.A. Yoreh Deah 344 #20 discussing the burial of a scholar, says that his grave should be visited on the seventh day after the burial, and on the thirtieth day and at the end of the year. The commentator Be'er Hagolah, to this passage, quoting the Kol bo, says that if the seventh day is on the New Moon one should not visit the grave. This does not apply to an infant, which implies that one may visit the graves of adults at any of these stated times and it is not necessary to stay away from the cemetery for a year. This matter is discussed

in *Och Letsoro*, page 137, as follows: "It is a wide-spread idea that we may not visit the grave of the departed within twelve months after death but that is an error. It is permitted to go." As a matter of fact, Jews living in Arabic lands have the custom of visiting the cemetery every morning during the first seven days of mourning. (See M. Higger, *Semachot*, p. 79.)

Since the custom of visiting the grave was connected originally with the sombre ritual of fast-days, and since mourning is not proper on the Sabbath or holidays, the cemetery should not be visited on such days.

Yahrzeit and Charity . . . *It is customary to give donations to the synagogue in memory of a deceased friend or relative during the week of the funeral or on the anniversary of the death. In some communities the close relatives of the deceased will commemorate the anniversary by decorating the pulpit with flowers for the Sabbath of the Yahrzeit.*

There is no Biblical or Talmudic reference to the wide-spread custom of giving charity in honor of the dead although the Talmud (b. Baba Bathra 10a) elaborates the verse in Proverbs 10:2 and 11:4: "Righteousness delivereth from death," taking the word "righteousness," "tsedakah," in the later sense of charity. Sifre, edition Friedmann, p. 112b, com-

menting on the verse in Deuteronomy 21:8: "Forgive O Lord Thy people Israel whom Thou hast redeemed," says, "forgive Thy people" refers to the living, and "whom Thou hast redeemed" refers to the dead. There is, however, considerable reference in the later Midrashim to this custom. See the note to Siddur Rashi #214.

The charity given in behalf or in honor of the dead, a custom which developed in the Middle Ages, was given in two forms, in the synagogue at the mention of the names of the dead (Hazkarat Neshamot) and at the cemetery. The custom of mentioning the names of the dead in the synagogue and giving charity in their behalf is mentioned in Siddur Rashi #214 where it is stated that this charity in honor of the dead is given in Germanic lands only on the Day of Atonement. (See also Sh.A. Orah Hayyim 621, 6.) Later in eastern Europe "the mentioning of the dead" (often with the vow of charity in their honor or in their behalf) spread to the last days of the three pilgrimage festivals, Passover, Shabuot and Sukkot. (Cf. Elbogen *Gottesdienst*, p. 204.) The Sephardim recite a prayer, Hashkabah, for the dead every Sabbath and give alms in their memory. (*Jewish Encyclopedia*, Vol. V, 283.) On the Day of Atonement the Sephardic congregations also read the list of the departed.

The custom of giving charity at the cemetery, particularly when visiting the cemetery on the day before the New Year and the day before the Day of Atone-

ment is mentioned in Sh.A. Orah Hayyim 581, #4, note of Isserles: "There are places where it is customary to visit the graves, to pray there and to give charity to the poor." The above refers to the day before the New Year; and for the day before the Day of Atonement, see Isserles' note to Sh.A. Orah Hayyim 605.

This wide-spread custom of giving charity in honor of the dead has been greatly elaborated in Reform congregations. Charity is given in many forms in honor of the dead. It has become customary for all the friends of the bereaved family to give a gift to the synagogue and often also to some other charitable institution in honor of the dead at the time of the funeral. Often the cards of acknowledgment of these various gifts are bound together in one volume and given to the bereaved family as a memorial of friendship and charity. In addition to these gifts at the time of the funeral, it is customary for the bereaved family and some of the more intimate friends to give a gift to the synagogue or to some other charity at the anniversary of the death. In some congregations the names of the departed are read on the Sabbath nearest the Yahrzeit and gifts are given to the congregation in honor of the departed. Some congregations invite special gifts of charity from all the members of the congregation on the Day of Atonement when the names of all who have died during the past year is read during the Memorial Services. In many congregations, families reserve from year to year the

Sabbath nearest the Yahrzeit for the privilege of providing the flowers for the altar.

MARRIAGES OF BEREAVED . . . *Weddings that have been planned for before the death takes place will be held with a minimum of celebration during the first month of mourning but if they had not been planned for, they are rarely arranged for during this month.*

The Talmud (b. Ketubot, 3b, 4a) discusses the question of whether a marriage which has been arranged for but has not yet taken place and is interrupted by a death of a parent, should be held or not. In answer to this question, the Talmud says: "If his bread is baked (for the wedding) and the meat slaughtered and the wine mixed and the father of the groom or the mother of the bride dies, they move the body into another room and lead the bride and the groom under the canopy and the marriage is consummated and they separate but observe the seven days of feasting and after that observe the seven days of mourning." The reason that the Talmud specifically mentions the father of the groom and the mother of the bride is that they are the ones who usually made the preparations for the wedding. The body is not buried at once because if the body were buried at once before the marriage service, the bride or groom, respectively, would be a mourner. In such a case (i.e., when a

burial takes place before the marriage) the mourning would have to be observed first.

If, however, there is no loss involved, i.e., if for example the food were not completely prepared, etc., then the burial should take place and the seven days of mourning and thereafter the marriage. (See also Sh.A. Yoreh Deah 342. Cf. Ba'er Hetev, note 3, who declares that the seven days of mourning should come first.) The later discussion on this law is given in Greenwald's *Och Letsoro*, section 4, pp. 40-45, where, incidentally no distinction is made as to which parent of which of the two parties has died.

Our present Reform custom, if the marriage has all been arranged for, is to have it take place with a minimum of celebration. But if it had not been completely arranged for, then the marriage is not celebrated till at least the thirty days of mourning are over, as indeed the law is in the Shulhan Aruk (Yoreh Deah 392, 1): "A man is forbidden to marry all the thirty days of his mourning even without festivities. After thirty days, it is permitted even if he had been mourning for his father and mother."

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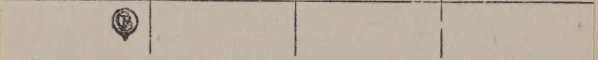
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